SIDNEY'S

Discourses on Government.

Gilbert Russell

DISCOURSES

ON

GOVERNMENT.

BY ALGERNON SIDNEY.

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CONTENTS.

CHAPTER III.

PAGE

Sect. ix. Our own laws confirm to us the enjoyment of our native rights 10

x. The words of St. Paul enjoining obedience to higher powers, favour all sorts of governments no less than monarchy 16

xi. That which is not just is not law, and that which is not law ought not to be obeyed . . 34

xii. The right and power of a magistrate depends upon his institution, not upon his name . . 38

xiii. Laws were made to direct and instruct magistrates, and if they will not be directed, to restrain them 45

xiv. Laws are not made by kings, not because they are busied in greater matters than doing justice, but because nations will be governed by rule, and not arbitrarily 54

xv. A general presumption that kings will govern well, is not a sufficient security to the people . 65

xvi. The observation of the laws of nature is absurdly expected from tyrants, who set themselves up against all laws; and he that subjects kings to no other law than what is common to tyrants, destroys their being . . . 71

xvii. Kings cannot be the interpreters of the oaths they take 82

PAGE

XVIII. The next in blood to deceased kings, cannot generally be said to be kings till they are crowned 99

XIX. The greatest enemy of a just magistrate is he who endeavours to invalidate the contract between him and the people, or to corrupt their manners 124

XX. Unjust commands are not to be obeyed; and no man is obliged to suffer for not obeying such as are against law 131

XXI. It cannot be for the good of the people, that the magistrate have a power above the law: and he is not a magistrate who has not his power by law 138

XXII. The rigour of the law is to be tempered by men of known integrity and judgment, and not by the prince who may be ignorant or vicious . 151

XXIII. ARISTOTLE proves, that no man is to be intrusted with an absolute power, by shewing that no one knows how to execute it, but such a man as is not to be found 160

XXIV. The power of AUGUSTUS CAESAR was not given, but usurped 165

XXV. The regal power was not the first in this nation, nor necessarily to be continued, though it had been the first 167

XXVI. Though the king may be intrusted with the power of choosing judges; yet that by which they act is from the law 184

XXVII. MAGNA CHARTA was not the original, but a declaration of the English liberties. The king's power is not restrained, but created by that and other laws; and the nation that made them can only correct the defects of them . . 199

XXVIII. The English nation has always been governed by itself, or its representatives 206

XXIX. The king was never master of the soil . . . 233

PAGE

xxx. HENRY the First was king of England by as good a title as any of his predecessors or successors 240

xxxi. Free nations have a right of meeting, when and where they please, unless they deprive themselves of it 246

xxxii. The powers of kings are so various, according to the constitutions of several states, that no consequence can be drawn to the prejudice or advantage of any one, merely from the name . 259

xxxiii. The liberty of a people is the gift of God and nature 263

xxxiv. No veneration paid, or honour conferred upon a just and lawful magistrate, can diminish the liberty of a nation 269

xxxv. The authority given by our law to the acts performed by a king *de facto*, detract nothing from the people's right of creating whom they please 274

xxxvi. The general revolt of a nation cannot be called a rebellion 278

xxxvii. The English government was not ill constituted, the defects more lately observed proceeding from the change of manners, and corruption of the times 283

xxxviii. The power of calling and dissolving parliaments is not simply in the king. The variety of customs in chusing parliament-men, and the errors a people may commit, neither prove that kings are or ought to be absolute . . . 295

xxxix. Those kings only are heads of the people, who are good, wise, and seek to advance no interest but that of the public 307

xl. Good laws prescribe easy and safe remedies against the evils proceeding from the vices or infirmities of the magistrate; and when they fail, they must be supplied 319

PAGE

XLI. The people, for whom and by whom the magistrate is created, can only judge whether he rightly perform his office or not 328

XLII. The person that wears the crown cannot determine the affairs which the law refers to the king 337

XLIII. Proclamations are not laws 347

XLIV. No people that is not free, can substitute delegates 357

XLV. The legislative power is always arbitrary, and not to be trusted in the hands of any, who are not bound to obey the laws they make . . . 367

XLVI. The coercive power of the law proceeds from the authority of Parliament 372

CHAPTER III.

SECTION IX.

OUR OWN LAWS CONFIRM TO US THE ENJOYMENT OF OUR NATIVE RIGHTS.

If that which our author calls divinity did reach the things in dispute between us, or that the opinions of the fathers, which he alledges, related to them, he might have spared the pains of examining our laws; for a municipal sanction were of little force to confirm a perpetual and universal law, given by God to mankind; and of no value against it, since man cannot abrogate what God hath instituted, nor one nation free itself from a law that is given to all. But having abused the scriptures, and the writings of the fathers (whose opinions are to be valued only so

far as they rightly interpret them) he seems desirous to try, whether he can as well put a false sense upon our law, and has fully compassed his design. According to his custom, he takes pieces of passages from good books, and turns them directly against the plain meaning of the authors, expressed in the whole scope and design of their writings. To shew that he intends to spare none, he is not ashamed to cite Bracton, who of all our ancient law-writers, is most opposite to his maxims. He lived, says he, in Henry the Third's time, since parliaments were instituted: as if there had been a time when England had wanted them; or that the establishment of our liberty had been made by the Normans, who, if we will believe our author, came in by the force of arms, and oppressed us. But we have already proved the essence of parliaments to be as ancient as our nation, and that there was no time in which there were not such councils or assemblies of the people as had the power of the whole, and made or unmade such laws as best pleased themselves. We have indeed a French word from a people that came from France, but the power was always in ourselves: and the Norman kings were obliged to swear they would govern according to the laws that had been made by those assemblies. It imports little, whether Bracton lived before or after they came amongst us. His words are, "*Omnes sub eo, & ipse sub nullo, sed tantum sub Deo;* all are under him, and he under none but God only. If he offend, since no writ can go out against him, their remedy is by petitioning him to amend his faults; which if he will not do, it is pun-

ishment enough for him to expect God as an avenger. Let none presume to look into his deeds, much less to oppose him." Here is a mixture of sense and nonsense, truth and falsehood, the words of Bracton, with our author's foolish inferences from them. Bracton spoke of the political capacity of the king, when no law had forbidden him to divide it from his natural. He gave the name of king to the sovereign power of the nation, as Jacob called that of his descendants the sceptre; which he said should not depart from Judah till Shiloh came, though all men know, that his race did not reign the third part of that time over his own tribe, nor full fourscore years over the whole nation. The same manner of speech is used in all parts of the world. Tertullian, under the name of Cæsar comprehended all magistratical power, and imputed to him the acts, of which in his person he never had any knowledge. The French say, their king is always present, "*sur son lit de justice*," in all the sovereign courts of the kingdom, which are not easily numbered; and that maxim could have in it neither sense nor truth, if by it they meant a man, who can be but in one place at one time, and is always comprehended within the dimensions of his own skin. These things could not be unknown to Bracton, the like being in use amongst us; and he thought it no offence so far to follow the dictates of reason, prohibited by no law, as to make a difference between the invisible and omnipresent King, who never dies, and the person that wears the crown, whom no man, without the guilt of treason, may endeavour to kill,

since there is an act of Parliament in the case. I will not determine whether he spoke properly or no as to England; but if he did not, all that he said upon a false supposition, is nothing to our purpose. The same Bracton says, "the king doth no wrong," inasmuch as he doth nothing but by law. "* The power of the king is the power of the law, a power of right, not of wrong." Again, "if† the king does injustice, he is not king." In another place he has these words; ‡ "the king therefore ought to exercise the power of the law, as becomes the vicar and minister of God upon earth, because that power is the power of God alone; but the power of doing wrong is the power of the devil, and not of God. And the king is his minister, whose work he does: whilst he does justice he is the vicar of the eternal King; but if he deflects from it to act unjustly, he is the minister of the devil." He also says that the king is "*singulis major, universis minor;*" and that he who is, "*in justitiâ exequenda omnibus major, in justitia recipienda cuilibet ex plebe fit æqualis.*" I shall not say Bracton is in the right

* Potestas regis est potestas legis, potestas juris, non injuriæ. Bract. de leg. Angl.

† Qui si facit injuriam, non est rex. Ibid.

‡ Exercere igitur debet rex potestatem juris, sicut Dei vicarius & minister in terra, quia illa potestas solius Dei est: potestas autem injuriæ diaboli est, non Dei; & cujus horum opera fecerit rex, ejus minister erit: igitur dum facit justitiam, vicarius est Regis æterni: minister autem diaboli dum declinet ad injuriam. Ibid. l. 3.

when he speaks in this manner; but it is strange impudence in Filmer to cite him as a patron of the absolute power of kings, who does so extremely depress them. But the grossest of his follies is yet more pardonable than his detestable fraud in falsifying Bracton's words, and leaving out such as are not for his purpose, which shew his meaning to be directly contrary to the sense put upon them. That this may appear, I shall set down the words as they are found in Bracton: "*Ipse autem rex non debet esse sub homine, sed sub Deo, & sub lege, quia lex facit regem. Attribuat ergo rex legi quod lex attribuit ei, id est dominationem & potestatem: non est enim rex ubi dominatur voluntas & non lex; & quod sub lege esse debeat, cum sit Dei vicarius, evidenter apparet.*" If Bracton therefore be a competent judge, the king is under the law; and he is not a king, nor God's vicegerent, unless he be so; and we all know how to proceed with those, who, being under the law, offend against it. For the law is not made in vain. In this case something more is to be done than petitioning; and it is ridiculous to say, that if "he will not amend, it is punishment enough for him to expect God as an avenger;" for the same may be said of all malefactors. God can sufficiently punish thieves and murderers: but the future judgment, of which perhaps they have no belief, is not sufficient to restrain them from committing more crimes, nor to deter others from following their example. God was always able to punish murderers, but yet by his law he commands man to shed the blood of him who should shed man's blood; and de-

clares, that the land cannot be purged of the guilt by any other means. He had judgments in store for Jeroboam, Ahab, and those that were like them; but yet he commanded that, according to that law, their houses should be destroyed from the earth. The dogs licked up the blood of Ahab, where they had licked that of Naboth, and ate Jezebel, who had contrived his murder. "But," says our author, "we must not look into his deeds, much less oppose them." Must not David look into Saul's deeds, nor oppose them? Why did he then bring together as many men as he could to oppose, and make foreign alliances against him, even with the Moabites, and the accursed Philistines? Why did Jehu not only destroy Ahab's house, but kill the king of Judah, and his forty brothers, only for going to visit his children? Our author may perhaps say, because God commanded them. But if God commanded them to do so, he did not command them and all mankind, not to do so; and if he did not forbid, they have nothing to restrain them from doing the like, unless they have made municipal laws of their own to the contrary, which our author and his followers may produce when they can find them.

His next work is, to go back again to the tribute paid by Christ to Cæsar, and judiciously to infer, that all nations must pay the same duty to their magistrates, as the Jews did to the Romans, who had subdued them. "Christ did not," says he, "ask what the law of the land was, nor inquire whether there was a statute against it, nor whether the tribute

were given by the consent of the people, but upon sight of the superscription concluded, &c." It had been strange, if Christ had inquired after their laws, statutes, or consent, when he knew, that their commonwealth, with all the laws by which it had subsisted, was abolished; and that Israel was become a servant to those who exercised a most violent domination over them; which, being a peculiar punishment for their peculiar sins, can have no influence upon nations, that are not under the same circumstances.

But of all that he says, nothing is more incomprehensible, than what he can mean by lawful kings to whom all is due that was due to the Roman usurpers. For lawful kings are kings by the law: in being kings by the law, they are such kings as the law makes them; and that law only must tell us what is due to them; or by a universal patriarchical right, to which no man can have a title, as is said before, till he prove himself to be the right heir of Noah. If neither of these are to be regarded, but that right follows possession, there is no such thing as a usurper; he who has the power has the right, as indeed Filmer says; and his wisdom, as well as his integrity, is sufficiently declared by the assertion.

This wicked extravagancy is followed by an attempt of as singular ignorance and stupidity, to shuffle together usurpers and conquerors, as if they were the same; whereas, there have been many usurpers who were not conquerors, and conquerors that deserved

not the name of usurpers. No wise man ever said, that Agathocles or Dionysius conquered Syracuse; Tarquin, Galba, or Otho, Rome; Cromwell, England; or that the magi, who seized the government of Persia, after the death of Cambyses, conquered that country. When Moses and Joshua had overthrown the kingdoms of the Amorites, Moabites, and Canaanites; or when David subdued the Ammonites, Edomites, and others; none, as I suppose, but such divines as Filmer, will say they usurped a dominion over them. There is such a thing amongst men as just war, or else true valour would not be a virtue, but a crime: and instead of glory, the utmost infamy would always be the companion of victory. There are, says* Grotius, laws of war as well as of peace. He who, for a just cause, and by just means, carries on a just war, has as clear a right to what is acquired as can be enjoyed by man; but all usurpation is detestable and abominable.

SECTION X.

THE WORDS OF ST. PAUL, INJOINING OBEDIENCE TO HIGHER POWERS, FAVOUR ALL SORTS OF GOVERNMENTS, NO LESS THAN MONARCHY.

Our author's next quarrel is with St. Paul, "who did not," as he says, "in injoining subjection to the

*Belli æque ac pacis jura. De jur. bel. & pac.

higher powers, signify the laws of the land, or mean the highest powers, as well aristocratical and democratical as regal, but a monarch that carries the sword, &c." But what if there be no monarch in the place? or what if he do not carry the sword? Had the apostle spoken in vain, if the liberty of the Romans had not been overthrown by the fraud and violence of Cæsar? Was no obedience to be exacted whilst that people enjoyed the benefit of their own laws, and virtue flourished under the moderate government of a legal and just magistracy, established for the common good, by the common consent of all? Had God no minister among them, till law and justice were overthrown; the best part of the people desrtoyed by the fury of a corrupt, mercenary soldiery; and the world subdued under the tyranny of the worst monsters, that it had ever produced? Are these the ways of establishing God's vicegerents? And will he patronize no governors or governments, but such as these? Does God uphold evil, and that only? If the world has been hitherto mistaken, in giving the name of evil to that which is good, and calling that good which is evil; I desire to know, what can be called good amongst men, if the government of the Romans, till they entered Greece and Asia, and were corrupted by the luxury of both, does not deserve that name? Or what is to be esteemed evil, if the establishment and exercise of the Cæsars' power were not so? But says he, "Wilt thou not be afraid of the power?" and was there no power in the governments, that had no monarchs? Were the

Carthaginians, Romans, Grecians, Gauls, Germans, and Spaniards, without power? Was there no sword in that nation, and their magistrates, who overthrew the kingdoms of Armenia, Egypt, Numidia, Macedon, and many others, whom none of the monarchs were able to resist? Are the Venetians, Switzers, Grisons, and Hollanders, now left in the same weakness, and no obedience at all due to their magistrates? If this be so, how comes it to pass, that justice is so well administered amongst them? Who is it that defends the Hollanders in such a manner, that the greatest monarchs, with all their swords, have had no great reason to boast of any advantages gained against them? At least till we (whom they could not resist, when we had no monarch, though we have been disgracefully beaten by them since we had one) by making leagues against them, and sowing divisions amongst them, instigated and assisted the greatest power now in the world, to their destruction and our own. But our author is so accustomed to fraud, that he never cites a passage from scripture, which he does not abuse or vitiate; and that he may do the same in this place, he leaves out the following words, "For there is no power but of God, that he might intitle one sort only to his protection." If, therefore, the people and popular magistrates of Athens; the two kings, ephori, and senate of Sparta; the sanhedrims amongst the Hebrews; the consuls, tribunes, prætors, and senate of Rome; the magistrates of Holland, Switzerland, and Venice; have, or had power, we may conclude, that they also were ordained by God; and that, according to the precept

of the apostle, the same obedience for the same reason due to them as to any monarch.

The apostle, farther explaining himself, and shewing, who may be accounted a magistrate, and what the duty of such a one is, informs us, when we should fear, and on what account. "Rulers," says he, "are not a terror to good works, but to the evil: wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same; for he is the minister of God, a revenger to execute wrath upon him that doth evil." He therefore is only the minister of God, who is not a terror to good works, but to evil; who executes wrath upon those that do evil, and is a praise to those that do well. And he who doth well, ought not to be afraid of the power; for he shall receive praise. Now if our author were alive, though he was a man of a hard forehead, I would ask him, whether in his conscience he believed, that Tiberius, Caligula, Claudius, Nero, and the rabble of succeding monsters, were a praise to those who did well, and a terror to those who did ill; and not the contrary, a praise to the worst, and a terror to the best men of the world? Or for what reason* Tacitus could say, that virtue brought men who lived under them to certain destruction, and recite so many examples of the brave and good, who were murdered by them for being so, unless they had endeavoured to extinguish all that was

* Ob virtutes certissimum exitium. Hist. l. i. c. 2.

good, and to * tear up virtue by the roots? Why did he call Domitian an † enemy to virtue, if he was a terror only to those that did evil? If the world has hitherto been misled in these things, and given the name of virtue to vice, and of vice to virtue, then Germanicus, Valerius Asiaticus, Corbulo, Helvidius Priscus, Thraseas, Soranus, and others that resembled them, who fell under the rage of those beasts, nay, Paul himself, and his disciples, were evil doers; and Macro, Narcissus, Pallas, Vinnius, Laco, and Tigellinus, were virtuous and good men. If this be so, we are beholden to Filmer, for admonishing mankind of the error in which they had so long continued. If not, those who persecuted and murdered them for their virtues, were not a terror to such as did evil, and a praise to those who did well. The worst men had no need to fear them; but the best had, because they were the best. All princes, therefore, that have power, are not to be esteemed equally the ministers of God. They that are so, must receive their dignity from a title, that is not common to all, even from a just employment of their power, to the encouragement of virtue, and to the discouragement of vice. He that pretends to the veneration and obedience due to the ministers of God, must, by his actions, manifest that he is so. And though I am unwilling to advance a proposition that may sound harshly to tender years, I am inclined to believe, that the same rule, which obliges us to yield

* Ipsam exscindere virtutem. Ann. l. xvi. c. 21.

† Virtutibus infestum.

obedience to the good magistrate, who is the minister of God, and assures us, that in obeying him we obey God, does equally oblige us not to obey those, who make themselves the ministers of the devil, lest in obeying them we obey the devil, whose works they do.

That none, but such as are wilfully ignorant, may mistake Paul's meaning, Peter, who was directed by the same spirit, says distinctly, "Submit yourselves to every ordinance of man for the Lord's sake." If, therefore, there be several ordinances of men tending to the same end, that is, the obtaining of justice, by being a terror to the evil, and a praise to the good, the like obedience is, for conscience sake, injoined to all, and upon the same condition. But, as no man dares to say, that Athens and Persia, Carthage and Egypt, Switzerland and France, Venice and Turky, were, and are, under the same government; the same obedience is due to the magistrate in every one of those places, and all others on the same account, whilst they continue to be the ministers of God.

If our author says, that Peter cannot comprehend kings under the name of human ordinances, since Paul says, they are the ordinances of God, I may as well say, that Paul cannot call that the ordinance of God, which Peter calls the ordinance of man. But as it was said of Moses and Samuel, that they who spoke by the same spirit could not contradict each other, Peter and Paul, being full of wisdom and sanctity, and inspired by the same spirit, must needs

say the same thing; and Grotius shews, that they perfectly agree, though the one calls kings, rulers, and governors, the ordinance of man, and the other the ordinance of God; inasmuch as God having from the beginning ordained, that men should not live like wolves in woods, every man by himself, but together, in civil societies, left to every one a liberty of joining with that society which best pleased him, and to every society to create such magistrates, and frame such laws, as should seem most conducing to their own good, according to the measure of light and reason they might have. And every magistracy so instituted might rightly be called the ordinance of man, who was the instituter, and the ordinance of God, according to which it was instituted; "* Because," says he, "God approved and ratified the salutary constitutions of government made by men."

But, says our author, Peter expounds his own words of the human ordinance to be the king, who is the "*lex loquens;*" but he says no such thing, and I do not find that any such thought ever entered into the apostle's mind. The words are often found in the works of Plato and Aristotle: but applied only to such a man as is a king by nature, who is endowed with all the virtues that tend to the good of human societies in a greater measure than any, or all those, that compose them; which character, I think, will be

* Quia salubrem hominum constitutionem Deus probavit & sanxit. De jur. bel. & pac.

ill applied to all kings. And that this may appear to be true, I desire to know, whether it would well have agreed with Nero, Caligula, Domitian, or others like to them; and if not with them, then not with all, but only with those who are endowed with such virtues. But if the king be made by man, he must be such as man makes him to be: and if the power of a law had been given by any human sanction to the word of a foolish, mad, or wicked man, (which I hardly believe) it would be destroyed by its own iniquity and turpitude, and the people left under the obligation of rendering obedience to those who so use the sword, that the nations under them may live soberly, peaceably, and honestly.

This obliges me a little to examine what is meant by the sword. The Pope says, there are two swords, the one temporal, the other spiritual; and that both of them were given to Peter and his successors. Others more rightly understand the two swords to be that of war, and that of justice, which, according to several constitutions of governments, have been committed to several hands, under several conditions and limitations. The sword of justice comprehends the legislative and the executive power: the one is exercised in making laws, the other in judging controversies according to such as are made. The military sword is used by those magistrates who have it, in making war or peace, with whom they think fit; and sometimes by others who have it not, in pursuing such wars as are resolved upon by another power. The Jewish doctors generally agree, that

the kings of Judah could make no law, because there was a curse denounced against those who should add to, or detract from, that which God has given by the hand of Moses; that they might sit in judgment with the high-priest and sanhedrim; but could not judge by themselves, unless the sanhedrim did plainly fail of performing their duty. Upon this account Maimonides excuses David for commanding Solomon not to suffer the grey hairs of Joab to go down to the grave in peace; and Solomon for appointing him to be killed at the foot of the altar: for he having killed Abner and Amasa, and by those actions shed the blood of war in time of peace, the sanhedrim should have punished him; but, being protected by favour or power, and even David himself fearing him, Solomon was put in mind of his duty, which he performed, though Joab laid hold upon the horns of the altar, which, by the express words of the law, gave no protection to wilful murderers.

The use of the military sword amongst them was also moderated. Their kings might make war upon the seven accursed nations that they were commanded to destroy, and so might any other man; for no peace was to be made with them; but not against any other nation, without the assent of the sanhedrim. And when Amaziah, contrary to that law, had foolishly made war upon Joash king of Israel, and thereby brought a great slaughter upon Judah, the princes, that is, the sanhedrim, combined against him, pursued him to Lachish, and killed him there.

The legislative power of Sparta was evidently in the people. The laws that go under the name of Lycurgus, were proposed by him to the general assembly of the people, and from them received their authority:* but the discipline they contained was of such efficacy for framing the minds of men to virtue, and by banishing silver and gold they so far banished all manner of crimes, that from the institution of those laws to the times of their corruption, which was more than eight hundred years, we hardly find, that three men were put to death, of whom two were kings; so that it seems difficult to determine where the power of judging did reside, though it is most probable, considering the nature of the government, that it was in the senate, and in cases extraordinary, in the ephori, with a right of appealing to the people. Their kings, therefore, could have little to do with the sword of justice, neither the legislative nor the judicial power being any ways in them.

The military sword was not much more in their power, unless the excellency of their virtues gave them the credit of persuading, when the law denied the right of commanding. They were obliged to make war against those, and those only, who were declared enemies by the senate and ephori, and in the manner, place, and time, they directed: so that Agesilaus, though carrying on a glorious war in

* Plut. vit. Lycur.

Persia, no sooner received the parchment-roll, wherein he was commanded by the ephori to come home for the defence of his own country, than he immediately returned, and is on that account called by no less a man than Xenophon,* a good and faithful king, rendering obedience to the laws of his country.

By this it appears, that there are kings, who may be feared by those that do ill, and not by such as do well; for, having no more power than what the law gives, and being obliged to execute it as the law directs, they cannot depart from the precept of the apostle. My own actions, therefore, or the sense of my own guilt arising from them, is to be the measure of my fear of that magistrate who is the minister of God, and not his power.

The like may be said of almost all the nations of the world, that have had any thing of civil order amongst them. The supreme magistrate, under what name soever he was known, whether king, emperor, asymnetes, suffetes, consul, dictator, or archon, has usually a part assigned to him in the administration of justice, and making war; but that he may know it to be assigned, and not inherent, and so assigned as to be employed for the public good, not to his own profit or pleasure, it is circumscribed by such rules as he cannot safely transgress. This is above all seen in the German nations, from whom we draw our original and government; and is so well

* De reg. Agesil.

described by Tacitus in his treatise of their customs and manners, that I shall content myself to refer to it, and to what I have cited from him in the former part of this work.* The Saxons, coming into our country, retained to themselves the same rights. They had no kings but such as were set up by themselves, and they abrogated their power when they pleased.† Offa acknowledged, "that he was chosen for the defence of their liberty, not from his own merit, but by their favour;" and in the "*conventus pananglicus*," at which all the chief men, as well secular as ecclesiastical, were present, it was decreed by the king, archbishops, abbots, dukes, and senators, that the kings should be chosen by the priests, and by the elders of the people. In pursuance of which, Egbert, who had no right to the succession, was made king, Ethelwerd was chosen in the same manner‡ by the consent of all. Ethelwolf, a monk, for want of a better, was advanced to the same honour. His son Alfred, though crowned by the Pope, and marrying without the consent of the nobility and kingdom,‖ against their customs and statutes, acknowledged, that he had received the crown from the bounty of the princes, elders, and people; and in his will declared, that he left the people as he had found them, free as the inward thoughts

* De morib. Germ.

† Ad libertatis vestræ tuitionem non meis meritis, sed sola liberalitate vestra.

‡ Omnium consensu.

‖ Contra morem & stauta.

of man. His son Edward* was elected to be his successor. Ethelstan, though a bastard, and without all title, was elected by the consent of the nobility and people. Eadred, by the same authority, was elected and preferred before the sons of Edmund his predecessor. Edwin, though rightly chosen, was deposed for his ill life, and Edgar† elected king, by "the will of God, and consent of the people." But he also was deprived of the crown for the rape of a nun, and after seven years restored by the whole people, "*coram omni multitudine populi Anglorum.*" Ethelred, who is said to have been‡ cruel in the beginning, wretched in the course, and infamous in the end of his reign, was deposed by the same power that had advanced him. Canutus || made a contract with the princes, and the whole people, and thereupon was, by general consent, crowned king, over all England. After him Harold was chosen in the usual manner. He being dead, a message was sent to Hardi Canute, with an offer of the crown, which he accepted, and accordingly was received. Edward the Confessor was § elected king with the consent of the clergy and people at London; and Harold excused himself for not performing his oath to William the Norman,

* Successor monarchiæ electus.

† Et eligerunt, Deo dictante, Edgarum in Regem, annuente populo.

‡ Sævus in principio, miser in medio, turpis in exitu.

|| Canutus fœdus cum principibus & omni populo, & illi cum ipso percusserunt.

§ Annuente clero & populo Londini, in regem eligitur.

because he said he had made it unduly and presumptuously,* without consulting the nobility and people, and without their authority. William was received with great joy by the clergy and people, and saluted king by all, swearing to observe the ancient good and approved laws of England: and though he did but ill perform his oath, yet before his death, he seemed to repent of the ways he had taken, and only wishing his son might be king of England, he confessed in his last will, made at Caen, in Normandy,† that he neither found nor left the kingdom as an inheritance. If he possessed no right except what was conferred upon him, no more was conferred than had been enjoyed by the ancient kings, according to the approved laws, which he swore to observe. Those laws gave no power to any, till he was elected; and that which they did then give was so limited, that the nobility and people reserved to themselves the disposition of the greatest affairs, even to the deposition and expulsion of such as should not well perform the duty of their oaths and office. And I leave it to our author to prove, how they can be said to have had the sword, and the power, so as to be feared, otherwise than, as the apostle says, by those that do evil: which we acknowledge to be not only in the king, but in the lowest officer of justice in the world.

* Absque generali senatus & populi conventu & edicto. MATTH. PARIS. Gul. Gemit. &c.

† Neminem Anglici regni constituo hæredem; non enim tantum decus hæreditario jure possedi. Ibid.

If it be pretended, that our latter kings are more to be feared than William the Norman, or his predecessors, it must not be, as has been proved, either from the general rights of kings or from the doctrine of the apostle, but from something else that is peculiar and subsequent, which I leave our author's disciples to prove, and an answer may be found in due time. But to shew, that our ancestors did not mistake the words of the apostle, it is good to consider when, to whom, and upon what occasion, he spoke. The christian religion was then in its infancy; his discourses were addressed to the professors of it, who, though they soon grew to be considerable in number, were, for the most part, of the meanest sort of people, servants, or inhabitants of the cities, rather than citizens and freemen; joined in no civil body or society, nor such as had, or could have, any part in the government. The occasion was, to suppress the dangerous mistake of many converted Jews, and others, who, knowing themselves to be freed from the power of sin and the devil, presumed they were also freed from the obligation of human laws. And if this error had not been cropped in the bud, it would have given occasion to their enemies (who desired nothing more) to destroy them all; and who, knowing that such notions were stirring among them, would have been glad, that they who were not easily to be discovered, had by that means discovered themselves.

This induced a necesssity of diverting a poor, mean, scattered people, from such thoughts concern-

ing the state; to convince them of the error into which they were fallen, that christians did not owe the same obedience to civil laws and magistrates as other men, and to keep them from drawing destruction upon themselves by such ways, as not being warranted by God, had no promise of his protection. St. Paul's work was to preserve the professors of christianity, as appears by his own words: "* I exhort, that first of all, supplications, prayers, intercessions, and giving of thanks, be made for all men; for kings, and for all that are in authority, that we may live a quiet and peaceable life, in all godliness and honesty. †Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready for every good work." St. Peter agrees with him fully in describing the magistrate, and his duty; shewing the reasons why obedience should be paid to him, and teaching christians to be humble and contented with their condition, as free, yet not using their liberty for a cover to malice: and not only to fear God, and honour the king (of which conjunction of words such as Filmer are very proud) but to honour all men, as is said in the same verse. This was in a peculiar manner the work of that time, in which those who were to preach and propagate the gospel, were not to be diverted from that duty, by entangling themselves in the care of state-affairs: but it does in some sense agree with all times; for it can never be the duty of a good man to oppose such a magistrate, as is the minister of God in the exercise of his office, nor to deny to any man that which is his due.

* i Tim. 2. † Tit. iii.

But as the christian law exempts no man from the duty he owes to his father, master, or the magistrate, it does not make him more a slave than he was before, nor deprive him of any natural or civil right; and if we are obliged to pay tribute, honour, or any other thing, where it is not due, it must be by some precept very different from that which commands us to give to Cæsar that which is Cæsar's. If he defines the magistrate to be the minister of God, doing justice, and from thence draw the reasons he gives for rendering obedience to him, we are to inquire, whose minister he is who overthrows it, and look for some other reason for rendering obedience to him, than the words of the apostles. If David, who was willing to lay down his life for the people, who "hated iniquity," and would not "suffer a liar to come into his presence," was the minister of God, I desire to know whose minister Caligula was, who set up himself to be worshipped for a god, and would at once have destroyed all the people, that he ought to have protected? Whose minister was Nero, who, besides the abominable impurities of his life, and hatred to all virtue, as contrary to his person and government, set fire to the great city? If it be true, that "*contrariorum contraria est ratio*," these questions are easily decided; and if the reason of things are eternal, the same distinction, grounded upon truth, will be good forever. Every magistrate, and every man, by his works, will forever declare whose minister he is, in what spirit he lives, and consequently what obedience is due to him according to the precept of the apostle. If any man asks, what

I mean by justice, I answer, that the law of the land, as far as it is "*sanctio recta, jubens honesta, prohibens contraria*,"* declares what it is. But there have been, and are, laws, that are neither just nor commendable. There was a law in Rome, that no god should be worshipped without the consent of the senate: upon which Tertullian says scoffingly, "† That God shall not be God, unless he please man;" and, by virtue of this law, the first christians were exposed to all manner of cruelties; and some of the emperors (in other respects excellent men) most foully polluted themselves, and their government, with innocent blood. Antoninus Pius was taken in this snare; and Tertullian bitterly derides Trajan, for glorying in his clemency, when he had commanded Pliny, who was proconsul in Asia, not to make any search for christians, but only to punish them according to law, when they should be brought before him. No municipal law can be more firmly established by human authority, than that of the inquisition in Spain, and other places: and those accursed tribunals, which have shed more christian blood than all the Pagans that ever were in the world, are commonly called "holy offices." If a gentleman in Poland kills a peasant, he is by a law now in use free from punishment, if he lay a ducat upon the dead body. Evenus the Third, king of Scotland, caused a law to pass, by which the wives and daughters of noblemen were exposed to his lust,

* Cicero. † Nisi homini Deus placuerit, Deus non erit.

and those of the commons to the lust of the nobility. These, and an infinite number of others like to them, were not right sanctions, but such as have produced unspeakable mischiefs and calamities. They were not therefore laws: the name of justice is abusively attributed to them: those that govern by them cannot be the ministers of God: and the apostle, commanding our obedience to the minister of God for our good, commands us not to be obedient to the minister of the devil to our hurt; for we cannot serve two masters.

SECTION XI.

THAT WHICH IS NOT JUST, IS NOT LAW; AND THAT WHICH IS NOT LAW, OUGHT NOT TO BE OBEYED.

Our author, having for a long time pretended conscience, now pulls off his mask, and plainly tells us, that it is not on account of conscience, but for fear of punishment, or hopes of reward, that laws are to be obeyed. "That familiar distinction of the schoolmen," says he, "whereby they subject kings to the directive, but not to the coactive power of the law, is a confession, that kings are not bound by the positive laws of any nation, since the com-

pulsory power of laws is that which properly makes laws to be laws." Not troubling myself with this distinction of the schoolmen, nor acknowledging any truth to be in it, or that they are competent judges of such matters, I say, that if it be true, our author's conclusion is altogether false; for the directive power of the law, which is certain, and grounded upon the inherent good and rectitude that is in it, is that alone which has a power over the conscience, whereas the coercive is merely contingent; and the most just powers, commanding the most just things, have so often fallen under the violence of the most unjust men, commanding the most execrable villanies, that if they were therefore to be obeyed, the consciences of men must be regulated by the success of a battle or conspiracy, than which nothing can be affirmed more impious and absurd. By this rule, David was not to be obeyed, when by the wickedness of his son he was driven from Jerusalem, and deprived of all coercive power; and the conscientious obedience that had been due to him, was transferred to Absalom, who sought his life. And in St. Paul's time it was not from him, who was guided only by the Spirit of God, and had no manner of coercive power, that christians were to learn their duty, but from Caligula, Claudius, and Nero, who had that power well established by the mercenary legions. If this were so, the governments of the world might be justly called "*magna latrocinia;*" and men, laying aside all consideration of reason or justice, ought only to follow those, who can inflict the greatest punishments, or give the greatest rewards. But

since the reception of such opinions would be the extirpation of all that can be called good, we must look for another rule of our obedience; and shall find that to be the law, which being, as I said before, "*sanctio recta*," must be founded upon that eternal principle of reason and truth, from whence the rule of justice, which is sacred and pure, ought to be deduced, and not from the depraved will of man, which fluctuating according to the different interests, humours, and passions, that at several times reign in several nations, one day abrogates what had been enacted the other. The sanction, therefore, that deserves the name of a law, "* which derives not its excellency from antiquity, or from the dignity of the legislators, but from an intrinsic equity and justice," ought to be made, in pursuance of that universal reason, to which all nations, at all times, owe an equal veneration and obedience. By this we may know, whether he who has the power does justice or not: whether he be the minister of God to our good, a protector of good, and a terror to ill men; or the minister of the devil to our hurt, by encouraging, all manner of evil, and endeavouring by vice and corruption, to make the people worse, that they may be miserable, and miserable, that they may be worse. I dare not say, I shall never fear such a man, if he be armed with power: but I am sure I shall never esteem him to be the minister of God, and shall never think I do ill if I fear him. If he has, therefore, a coercive power over me, it is through my weakness; "for † he that will

* Tertul. † Qui cogi potest, nescit mori.

suffer himself to be compelled, knows not how to die." If, therefore, he who does not follow the directive power of the law, be not the minister of God, he is not a king, at least not such a king as the apostle commands us to obey: and if that sanction, which is not just, be not a law, and can have no obligation upon us, by what power soever it be established, it may well fall out, that the magistrate, who will not follow the directive power of the law, may fall under the coercive, and then the fear is turned upon him, with this aggravation, that it is not only actual, but just. This was the case of Nero; the coercive power was no longer in him, but against him. He that was forced to fly, and to hide himself, that was abandoned by all men and condemned to die "*according to ancient custom," did, as I suppose, fear, and was no way to be feared. The like may be said of Amaziah king of Judah, when he fled to Lachish; of Nebuchodonosor, when he was driven from the society of men; and of many emperors and kings of the greatest nations in the world, who have been so utterly deprived of all power, that they have been imprisoned, deposed, confined to monasteries, killed, drawn through the streets, cut in pieces, thrown into rivers, and indeed suffered all that could be suffered by the vilest slaves.

If any man say these things ought not to have been done, an answer may be given in a proper place; though it were enough to say, that the justice of the

* More majorum. SUETON. vit. Ner. c. xlix.

world is not to be overthrown by a mere assertion without proof; but that is nothing to the present question: for if it was ill done to drive Nero to despair, or to throw Vitellus into the common sewer, it was not because they were the ministers of God; for their lives were no way conformable to the character which the apostle gives to those who deserve that sacred name. If those only are to be feared who have the power, there was a time when they were not to be feared, for they had none; and if those princes are not obliged by the law, who are not under the coercive power, it gave no exemption to those, for they fell under it: and as we know not what will befall others who walk in their steps, till they are dead, we cannot till then know whether we are free from it or not.

SECTION XII.

THE RIGHT AND POWER OF A MAGISTRATE DEPENDS UPON HIS INSTITUTION, NOT UPON HIS NAME.

It is usual with impostors to obtrude their deceits upon men, by putting false names upon things, by which they may perplex men's minds, and from thence deduce false conclusions. But the points above-men-

tioned being settled, it imports little whether the governors, to whom Peter enjoins obedience, were only kings, and such as are employed by them, or all such magistrates as are the ministers of God; for he informs us of their works, that we may know them, and accordingly yield obedience to them. This is that therefore which distinguishes the magistrate to whom obedience is due, from him to whom none is due, and not the name that he either assumes, or others put upon him. But if there be any virtue in the word king, and that the admirable prerogatives, of which our author dreams, were annexed to that name, they could not be applied to the Roman emperors nor their substituted officers, for they had it not. It is true, Mark Antony, in a drunken fit, at the celebration of the impure Lupercalia, did offer a diadem to Julius Cæsar, which some flatterers pressed him to accept (as our great lawyers did Cromwell) but he durst not think of putting it upon his head. Caligula's affectation of that title, and the ensigns of royalty he wore, were taken for the most evident marks of his madness: and though the greatest and bravest of their men had fallen by the wars and proscriptions; though the best part of the senate had perished in Thessaly; though the great city was exhausted, and Italy brought to desolation, yet they were not reduced so low as to endure a king. Piso was sufficiently addicted to Tiberius, yet he could not suffer that Germanicus should be treated as the son of a king: "*Principis Romani, non Parthorum regis filio has epulas dari.*"* And whoever understands

* Tacit. Ann. ii. c. 57.

the latin tongue, and the history of those times, will easily perceive, that the word "*princeps*" signified no more than a principal or eminent man, as has been already proved: and the word of Piso could have no other meaning than that the son of a Roman ought not to be distinguished from others, as the sons of the Parthian kings were. This is verified by his letter to Tiberius, under the name of friend, and the answer of Tiberius promising to him †"whatsoever one friend could do for another." Here was no mention of majesty, or sovereign lord, nor the base subscriptions of servant, subject, or creature. And I fear, that as the last of these words was introduced amongst us by our bishops, the rest of them had been also invented by such christians as were too much addicted to the Asiatic slavery. However, the name of king was never solemnly assumed by, nor conferred upon, those emperors; and could have conferred no right, if it had. They exercised as they pleased, or as they durst, the power that had been gained by violence or fraud. The exorbitances they committed, could not have been justified by a title, any more than those of a pirate, who should take the same. It was no otherwise given to them than by way of assimilation, when they were guilty of the greatest crimes: and Tacitus, describing the detestable lust of Tiberius, says, "*Quibus adeo indomites exarserat, ut more regio pubem ingenuam stupris polluëret; nec formam tantum, & decora corporis, sed in his modestam pueritiam, in aliis majorum imagi-*

* Quod amicus amico præstare protest. TACIT.

nes, incitamentum cupiditatis habebat."* He also informs us, that Nero took his time to put Bareas Soranus to death, who was one of the most virtuous men of that age, when Tridates king of Armenia was at Rome; † "that he might shew the imperial grandeur by the slaughter of the most illustrious men, which he accounted a royal action." I leave it to the judgment of all wise men, whether it be probable, that the apostles should distinguish such as these from other magistrates; and dignify those only with the title of God's ministers, who distinguished themselves by such ways; or that the succeeding empeperors should be ennobled with the same prerogative, who had no other title to the name, than by resembling those that had it in such things as these. If this be too absurd and abominable to enter into the heart of a man, it must be concluded that their intention was only to divert the poor people to whom they preached, from involving themselves in the care of civil matters, to which they had no call. And the council would have been good (as things stood with them) if they had been under the power of a pirate, or any other villain, substituted by him.

But though the apostles had looked upon the officers set over the provinces belonging to the Roman empire, as sent by kings, I desire to know, whether

* Annal. l. vi. c. 1.

† Ut magnitudinem imperatoriam cæde insignium virorum quasi regio facinore ostentaret. An. l. xvi. c. 23.

it can be imagined, that they could think the subordinate governors to be sent by kings, in the countries that had no kings; or that obedience became due to the magistrates in Greece, Italy, or other provinces under the jurisdiction of Rome, only after they had emperors, and that none was due to them before? The Germans had then no king: the brave Arminius had been lately killed for aiming at a crown. When he had blemished all his virtues by that attempt, they forgot his former services. They never considered how many Roman legions he had cut in pieces, nor how many thousands of their allies he had destroyed. His valour was a crime deserving death, when he sought to make a prey of his country, which he had so bravely defended, and to enslave those who with him had fought for the public liberty. But if the apostles were to be understood to give the name of God's ministers only to kings, and those who are employed by them, and that obedience is due to no other, a domestic tyrant had been their greatest benefactor. He had set up the only government that is authorised by God, and to which a conscientious obedience is due. Agathocles, Dionysius, Phalarus, Pheræis, Pisistratus, Nabis, Machanidas, and an infinite number of the most detestable villains that the world has ever produced, did confer the same benefits upon the countries they enslaved. But if this be equally false, sottish, absurd, and execrable, all those epithets belong to our author, and his doctrine, for attempting to depress all modest and regular magistracies, and endeavouring to corrupt the scripture to patronize the greatest of crimes.

No man, therefore, who does not delight in error, can think that the apostle designed precisely to determine such questions as might arise concerning any one man's right, or in the least degree, to prefer any one form of government before another. In acknowledging the magistrate to be man's ordinance, he declares, that man who makes him to be, may make him to be what he pleaseth; and though there is found more prudence and virtue in one nation than in another, the magistracy, which is established in any one, ought to be obeyed, till they who made the establishment think fit to alter it. All therefore, whilst they continue, are to be looked upon with the same respect. Every nation, acting freely, has an equal right to frame their own government, and to employ such officers as they please. The authority, right, and power, of these, must be regulated by the judgment, right, and power, of those who appoint them, without any relation at all to the name that is given: for that is no way essential to the thing. The same is frequently given to those, who differ exceedingly in right and power; and the same right and power is as often annexed to magistracies, that differ in name. The same power which had been in the Roman kings, was given to the consuls; and that which had been legally in the dictators, for a time not exceeding six months, was afterwards usurped by the Cæsars, and made perpetual. The supreme power (which some pretend belongs to all kings) has been, and is, enjoyed in the fullest extent by such as never had the name; and no magistracy was ever more restrained than those

that had the name of kings in Sparta, Arragon, England, Poland, and other places. They, therefore, that did thus institute, regulate, and restrain, create magistracies, and give them names and powers, as seemed best to them, could not but have in themselves the coercive as well as the directive over them; for the regulation and restriction is coercion; but most of all the institution, by which they could make them to be or not to be. As to the exterior force, it is sometimes on the side of the magistrate, and sometimes on that of the people; and as magistrates, under several names, have the same work incumbent upon them, and the same power to perform it, the same duty is to be exacted from them, and rendered to them: which being distinctly proportioned by the laws of every country, I may conclude, that all magistratical power, being the ordinance of man, in pursuance of the ordinance of God, receives its being and measure from the legislative power of every nation. And whether the power be placed simply in one, a few, or many men; or in one body, composed of the three simple species; whether the single person be called king, duke, marquis, emperor, sultan, mogul, or grand seignior; or the number go under the name of senate, council, pregadi, diet, assembly of estates, and the like, it is the same thing. The same obedience is equally due to all, whilst, according to the precept of the apostle, they do the work of God for our good: and if they depart from it, no one of them has a better title than the other to our obedience.

SECTION XIII.

LAWS WERE MADE TO DIRECT AND INSTRUCT MAGISTRATES; AND, IF THEY WILL NOT BE DIRECTED, TO RESTRAIN THEM.

I KNOW not who they are, that our author introduces to say, that "the first invention of laws was to bridle or moderate the over-great power of kings;" and, unless they give some better proof of their judgment in other things, shall little esteem them. They should have considered, that there are laws in many places where there are no kings; that there were laws in many before there were kings; as in Israel, the law was given three hundred years before they had any; but most especially, that as no man can be a rightful king, except by law, nor have any just power, but from the law, if that power be found to be over-great, the law that gave it must have been before that which was to moderate, or restrain it; for that could not be moderated, which was not in being. Leaving, therefore, our author to fight with these adversaries, if he pleases, when he finds them, I shall proceed to examine his own positions. "The truth is," says he, "the original of laws was, for the keeping of the multitude in order. Popular estates could not subsist at all without laws, whereas kingdoms were governed many ages without them. The people of Athens, as soon as they gave over kings, were forced to give power to Draco first, then to Solon, to

make them laws." If we will believe him, therefore, wheresoever there is a king, or a man who, by having power in his hands, is in the place of a king, there is no need of law. He takes them all to be so wise, just, and good, that they are laws to themselves, "*leges viventes.*" This was certainly verified by the whole succession of the Cæsars, the ten last kings of Pharamond's race, all the successors of Charles the Great, and others, that I am not willing to name; but, referring myself to history, I desire all reasonable men to consider, whether the piety and tender care, that were natural to Caligula, Nero, or Domitian, was such a security to the nations that lived under them, as without law to be sufficient for their preservation: for, if the contrary appears to be true, and that their government was a perpetual exercise of rage, malice, and madness, by which the worst of men were armed with power to destroy the best, so that the empire could only be saved by their destruction, it is most certain, that mankind can never fall into a condition, which stands more in need of laws to protect the innocent, than when such monsters reign, who endeavour their extirpation, and are too well furnished with means to accomplish their detestable designs. Without any prejudice, therefore, to the cause that I defend, I might confess, that all nations were at the first governed by kings, and that no laws were imposed upon those kings, till they, or the successors of those, who had been advanced for their virtues, by falling into vice and corruption, did manifestly discover the inconveniences of depending upon their will. Besides these, there are also chil-

dren, women, and fools, that often came to the succession of kingdoms, whose weakness and ignorance stand in as great need of support and direction, as the desperate fury of the others can do of restriction. And if some nations had been so sottish, not to foresee the mischief of leaving them to their will, others, or the same, in succeeding ages discovering them, could no more be obliged to continue in so pernicious a folly, than we are to live in that wretched barbarity, in which the Romans found our ancestors when they first entered this island.

If any man say, that Filmer does not speak of monsters, nor of children, women, or fools, but of wise, just, and good princes: I answer, that if there be an inherent right in kings, as kings, of doing what they please; and in those who are next in blood, to succeed them and inherit the same, it must belong to all kings, and such as upon title of blood would be kings. And as there is no family that may not, and does not, often produce such as I mentioned, it must also be acknowledged in them; and that power which is left to the wise, just, and good, upon a supposition that they will not make an ill use of it, must be devolved to those who will not, or cannot, make a good one; but will either maliciously turn it to the destruction of those they ought to protect, or through weakness suffer it to fall into the hands of those that govern them; who are found by experience to be for the most part the worst of all, most apt to use the basest arts, and to flatter the humours, and foment the vices, that are most prevalent in weak and vicious

princes. Germanicus, Corbulo, Valerius Asiaticus, Thraseas, Soranus, Helvidius Priscus, Julius Agricola, and other excellen tmen, lived in the times of Tiberius, Caligula, Claudius, and Nero: but the power was put into the hands of Sejanus, Macro, Tigellinus, and other villains like to them: and I wish there were not too many modern examples to shew, that weak and vicious princes will never chuse such as will preserve nations from the mischiefs that would ensue from their own incapacity or malice; but that they must be imposed upon them by some other power, or nations be ruined for want of them. This imposition must be by law, or by force. But as laws are made to keep things in good order, without the necessity of having recourse to force, it would be a dangerous extravagance to arm that prince with force, which probably in a short time must be opposed by force; and those who have been guilty of this error, as the kingdoms of the east, and the ancient Roman empire, where no provision was made by law against ill-governing princes, have found no other remedy than to kill them, when by extreme sufferings they were driven beyond patience; and this fell out so often, that few of their princes were observed to die by a common death. But since the empire was transmitted to Germany, and the emperors restrained by laws, that nation has never been brought to the odious extremities of suffering all manner of indignities, or revenging them upon the heads of princes. And if the Pope had not disturbed them upon the account of religion, nor driven their princes to disturb others, they might have passed many

ages without any civil dissention, and all their emperors might have lived happily, and died peaceably, as most of them have done.

This might be sufficient to my purpose: for, if all princes without distinction, whether good or bad, wise or foolish, young or old, sober or mad, cannot be entrusted with an unlimited power; and if the power they have, ought to be limited by law, that nations may not, with danger to themselves, as well as to the prince, have recourse to the last remedy: this law must be given to all, and the good can be no otherwise distinguished from the bad, and the wise from the foolish, than by the observation or violation of it. But I may justly go a step farther, and affirm, that this law, which, by restraining the lusts of the vicious and foolish, frequently preserves them from the destruction they would bring upon themselves or people, and sometimes upon both, is an assistance and direction to the wisest and best; so that they also, as well as the nations under them, are gainers by it. This will appear strange only to those who know not* "how difficult and insupportable the government of great nations is," and how unable the best man is to bear it. And, if it surpasses the strength of the best, it may easily be determined how ordinary men will behave themselves under it, or what use the worst will make of it. I know there have been wise and good kings; but they had not an absolute power, nor

* Quam grave & intolerandum sit cuncta regendi onus. TACIT.

would have accepted it, though it had been offered; much less can I believe, that any of them would have transmitted such a power to their posterity, when none of them could know any more than Solomon, whether his son would be a wise man, or a fool. But if the best might have desired, and had been able to bear it (though Moses by his own confession was not) that could be no reason why it should be given to the worst and weakest, or those who probably will be so. Since the assurance, that it will not be abused during the life of one man, is nothing to the consitution of a state which aims at perpetuity. And no man knowing what men will be, especially if they come to the power by succession, which may properly enough be called by chance, it is reasonably to be feared they will be bad, and consequently necessary so to limit their power, that if they prove to be so, the commonwealth may not be destroyed, which they were instituted to preserve. The law provides for this, in leaving to the king a full and ample power of doing as much good as his heart can wish, and in restraining his power, so that if he should depart from the duty of his office, the nation may not perish. This is a help to those who are wise and good, by directing them what they are to do, more certainly than any one man's personal judgment can do; and no prejudice at all, since no such man did ever complain he was not suffered to do the evil which he would abhor, if it were in his power: and is a most necessary curb to the fury of bad princes, preventing them from bringing destruction upon the people. Men are so subject to vices

and passions, that they stand in need of some restraint in every condition; but most especially when they are in power. The rage of a private man may be pernicious to one, or a few, of his neighbours: but the fury of an unlimited prince would drive whole nations into ruin: and those very men, who have lived modestly when they had little power, have often proved the most savage of all monsters, when they thought nothing able to resist their rage. It is said of Caligula, that no man ever knew "a better servant, nor a worse master."* The want of restraint made him a beast who might have continued to be a man. And though I cannot say, that our law necessarily admits the next in blood to the succession (for the contrary is proved); yet the facility of our ancestors, in receiving children, women, or such men as were not more able than themselves to bear the weight of a crown, convinces me fully, that they had so framed our laws, that even children, women, or ill men, might either perform as much as was necessarily required of them, or be brought to reason, if they transgressed and arrogated to themselves more than was allowed. For it is not to be imagined, that a company of men should so far degenerate from their own nature, which is reason, as to give up themselves, and their posterity, with all their concernments in the world, to depend upon the will of a child, a woman, an ill man, or a fool.

* Nec meliorem servum, nec detiorum dominum.
TAC. ANN. l. 6. c 20

If, therefore, laws are necessary to popular states, they are no less to monarchies; or rather, that is not a state or government, which has them not: and it is no less impossible for any to subsist without them, than for the body of a man to be, and perform its functions, without nerves or bones. And if any people had ever been so foolish as to establish that which they called a government, without laws to support and regulate it, the impossibility of its subsisting would evince the madness of the constitution, and ought to deter all others from following their example.

It is no less incredible, that those nations which rejected kings, did put themselves into the power of one man, to prescribe to them such laws as he pleased. But the instances alledged by our author are evidently false. The Athenians were not without laws when they had kings: Ægeus was subject to the laws, and did nothing of importance without the consent of the people; and Theseus, not being able to please them, died a banished man: Draco and Solon did not make, but propose laws; and they were of no force till they were established by the authority of the people.* The Spartans dealt in the same manner with Lycurgus; he invented their laws, but the people made them: and, when the assembly of all the citizens had approved and sworn to observe them till his return from Crete, he resolved rather to die in a voluntary banishment, than by his return to absolve them from the oath they had taken. The

* Plut. vit. Solon.

Romans also had laws during the government of their kings; but not finding in them that perfection they desired, the decemviri were chosen to frame others, which yet were of no value till they were passed by the people in the* "*comitia centuriata;*" and being so approved, they were established. But this sanction, to which every man, whether magistrate or private citizen, was subject, did no way bind the whole body of the people, who still retained in themselves the power of changing both the matter and form of their government, as appears by their instituting and abrogating kings, consuls, dictators, tribunes with consular power, and decemviri, when they thought good for the commonwealth. And if they had this power, I leave our author to shew, why the like is not in other nations.

* Ingenti hominum expectatione propositis decem tabulis, populum ad concionem convocarunt; & quod bonum, faustum fœlixque sit republicæ, ipsis, liberisque eorum esset, ire & legere leges propositas jussere. T. Liv. l. iii. c. 34.

SECTION XIV.

LAWS ARE NOT MADE BY KINGS, NOT BECAUSE THEY ARE BUSIED IN GREATER MATTERS THAN DOING JUSTICE, BUT BECAUSE NATIONS WILL BE GOVERNED BY RULE, AND NOT ARBITRARILY.

Our author, pursuing the mistakes to which he seems perpetually condemned, says, that "when kings were either busied in war, or distracted with public care, so that every private man could not have access unto their persons, to learn their wills and pleasures, then of necessity were laws invented, that so every particular subject might find his prince's pleasure." I have often heard, that governments were established for the obtaining of justice; and if that be true, it is hard to imagine what business a supreme magistrate can have to divert him from accomplishing the principal end of his institution. And it is commonly said, that this distribution of justice to a people, is a work surpassing the strength of any one man. Jethro seems to have been a wise man, and it is probable he thought Moses* to be so also; but he found the work of judging the people to be too heavy for him, and therefore advised him to leave the judgment of causes to others, who

* Exod. xviii.

should be chosen for that purpose; which advice Moses accepted, and God approved. The governing power was as insupportable to him as the judicial. He desired rather to die than to bear so great a burthen; and God neither accusing him of sloth or impatience, gave him seventy assistants. But if we may believe our author, the powers judicial and legislative, that of judging, as well as that of governing, are not too much for any man, woman, or child, whatsoever: and that he stands in no need, either of God's statutes to direct him, or man's counsel to assist him, unless it be when he is otherwise employed; and his will alone is sufficient for all. But what if he be not busied in greater matters, or distracted with public cares? Is every prince capable of this work? Though Moses had not found it too great for him, or it should be granted, that a man of excellent natural endowments, great wisdom, learning, experience, industry, and integrity, might perform it, is it certain, that all those who happen to be born in reigning families are so? If Moses had the law of God before his eyes, and could repair to God himself for the application or explanation of it; have all princes the same assistance? Do they all speak with God face to face, or can they do what he did, without the assistance he had? If all kings of mature years are of that perfection, are we assured, that none shall die before his heir arrives to the same? Or shall he have the same ripeness of judgment in his infancy? If a child comes to a crown, does that immediately infuse the most admirable endowments and graces? Have we any promise from heaven, that

women shall enjoy the same prerogatives in those countries where they are made capable of the succession? Or does that law which renders them capable, defend them, not only against the frailty of their own nature, but confer the most sublime virtues upon them? But who knows not, that no families do more frequently produce weak or ill men, than the greatest? and, which is worse, their greatness is a snare to them; so that they, who, in a low condition, might have passed unregarded, being advanced to the highest, have often appeared to be, or become, the worst of all beasts; and they who advance them are like to them: for if the power be in the multitude, as our author is forced to confess (otherwise the Athenians and Romans could not have given all, as he says, nor a part, as I say, to Draco, Solon, or the decemviri) they must be beasts also, who should have given away their right and liberty, in hopes of receiving justice from such as probably will neither understand nor regard it; or protection from those who will not be able to help themselves; and expect such virtue, wisdom, and integrity, should be, and forever remain, in the family they set up, as was never known to continue in any. If the power be not conferred upon them, they have it not; and if they have it not, their want of leisure to do justice, cannot have been the cause for which laws are made; and they cannot be the signification of their will, but are that to which the prince owes obedience, as well as the meanest subject. This is that which Bracton calls, "*esse sub lege*," and says, that "*rex*

in regno superiores habet Deum & legem."* Fortescue says, the kings of England cannot change the laws: and indeed, they are so far from having any such power, that the judges swear to have no regard to the king's letters or commands, but if they receive any, to proceed according to law, as if they had not been. And the breach of this oath does not only bring a blemish upon their reputation, but exposes them to capital punishments, as many of them have found. It is not, therefore, the king that makes the law, but the law that makes the king. It gives the rule for succession, making kingdoms sometimes hereditary, and sometimes elective, and (more often than either simply) hereditary under condition. In some places males only are capable of inheriting, in others females are admitted. Where the monarchy is regular, as in Germany, England, &c. the kings can neither make nor change laws: they are under the law, and the law is not under them; their letters or commands are not to be regarded: in the administration of justice, the question is not what pleases them, but what the law declares to be right, which must have its course, whether the king be busy, or at leisure, whether he will not. The King who never dies, is always present in the supreme courts, and neither knows nor regards the pleasure of the man that wears the crown. But lest he by his riches and power might have some influence upon judicial proceedings, the "great charter," that recapitulates

* De laud. leg. Angl. c.

and acknowledges our ancient inherent liberties, obliges him to swear, that he will neither sell, delay, nor deny justice to any man, according to the laws of the land; which were ridiculous and absurd, if those laws were only the signification of his pleasure, or any way depended upon his will. This charter having been confirmed by more than thirty parliaments, all succeeding kings are under the obligation of the same oath, or must renounce the benefit they receive from our laws; which if they do, they will be found to be equal to every one of us.

Our author, according to his custom, having laid down a false proposition, goes about to justify it by false examples, as those of Draco, Solon, the decemviri, and Moses, of whom no one had the power he attributes to them; and it were nothing to us, if they had. The Athenians and Romans, it was said before, were so far from resigning the absolute power without appeal to themselves, that nothing done by their magistrates was of any force, till it was enacted by the people. And the power given to the decemviri, "*sine provocatione*," was only in private cases, there being no superior magistrate, then in being, to whom appeals could be made. They were vested with the same power the kings and dictators enjoyed, from whom there lay no appeal, but to the people, and always to them; as appears by the case of Horatius, in the time of Tullus Hostilius; that of Marcus Fabius, when Papirius Cursor was dictator; and of Nenius the tribune, during that of Q. Fabius Maximus; all which I have cited already, and refer

to them.* There was, therefore, a reservation of the supreme power in the people, notwithstanding the creation of magistrates without appeal; and as it was quietly exercised in making strangers, or whom they pleased, kings, restraining the power of dictators to six months, and that of the decemviri to two years; when the last did, contrary to law, endeavour, by force, to continue their power, the people did, by force, destroy it and them.

The case of Moses is yet more clear: he was the most humble and gentle of all men: he never raised his heart above his brethren, and commanded kings to live in the same modesty: he never desired the people should depend upon his will: in giving laws to them he fulfilled the will of God, not his own; and those laws were not the signification of his will, but of the will of God. They were the production of God's wisdom and goodness, not the invention of man; given to purify the people, not to advance the glory of their leader. He was not proud and insolent, nor pleased with that ostentation of pomp, to which fools give the name of majesty; and whoever so far exalts the power of a man, as to make nations depend upon his pleasure, does not only lay a burden upon him, which neither Moses, nor any other, could ever bear, and every wise man will always abhor; but with an impious fury, endeavours to set up a government contrary to the laws of God, presumes to accuse him of want of wisdom, or goodness to

* T. Liv. l. i. c. 8.

his own people, and to correct his errors; which is a work fit to be undertaken by such as our author.

From hence, as upon a solid foundation, he proceeds, and making use of king James' words, infers, that kings are above the laws, because he so teaches us. But he might have remembered, that having affirmed the people could not judge of the disputes that might happen between them and kings, because they must not be judges in their own case, it is absurd to make a king judge of a case so nearly concerning himself, in the decision of which his own passions and interests may probably lead him into errors. And if it be pretended that I do the same, in giving the judgment of those matters to the people, the case is utterly different, both in the nature and consequences. The king's judgment is merely for himself; and if that were to take place, all the passions and vices, that have most power upon men, would concur to corrupt it. He that is set up for the public good, can have no contest with the whole people, whose good he is to procure, unless he deflect from the end of his institution, and set up an interest of his own in opposition to it. This is in its nature the highest of all delinquencies; and if such a one may be judge of his own crimes, he is not only sure to avoid punishment, but to obtain all that he sought by them; and the worse he is, the more violent will his desires be to get all the power into his hands, that he may gratify his lusts, and execute his pernicious designs. On the other side, in a popular assembly, no man judges for himself, otherwise

than as his good is comprehended in that of the public: nothing hurts him, but what is prejudicial to the commonwealth: such amongst them as may have received private injuries, are so far only considered by others, as their sufferings may have influence upon the public; if they be few and the matters not great, others will not suffer their quiet to be disturbed by them; if they are many and grievous, the tyranny thereby appears to be so cruel, that the nation cannot subsist, unless it be corrected or suppressed. Corruption of judgment proceeds from private passions, which in these cases never govern: and though a zeal for the public good may possibly be misguided, yet till it be so, it can never be capable of excess. The last Tarquin, and his lewd son, exercised their fury and lust in the murders of the best men in Rome, and the rape of Lucretia. Appius Claudius was filled with the like madness. Caligula and Nero were so well established in the power of committing the worst of villainies, that we do not hear of any man that offered to defend himself, or woman that presumed to refuse them. If they had been judges in these cases, the utmost of all villainies and mischiefs had been established by law: but as long as the judgment of these matters was in the people, no private or corrupt passion could take place. Lucius Brutus, Valerius, Horatius, and Virginius, with the people that followed them did not, by the expulsion of the kings, or the suppression of the decemviri, assume to themselves a power of committing rapes and murders, nor any advantages beyond what their equals might think they deserved by their virtues,

and services to the commonwealth; nor had they more credit than others for any other reason, than they shewed themselves most forward in procuring the public good, and by their valour and conduct best able to promote it.

Whatsoever happened after the overthrow of their liberty, belongs not to my subject, for there was nothing of popularity in the judgments that were made. One tyrant destroyed another; the same passions and vices for the most part reigned in both; the last was often as bad as his predecessor whom he had overthrown: and one was sometimes approved by the people for no other reason, than that it was thought impossible for him to be worse than he who was in possession of the power. But if one instance can be of force amongst an infinite number of various accidents, the words of Valerius Asiaticus, who, by wishing he had been the man that had killed Caligula, did, in a moment, pacify the fury of the soldiers, who were looking for those that had done it, shew, that as long as men retain any thing of that reason which is truly their nature, they never fail of judging rightly of virtue and vice; whereas violent and ill princes have always done the contrary, and even the best do often deflect from the rules of justice, as appears not only by the examples of Edward the First and Third, who were brought to confess it, but even those of David and Solomon.

Moreover, to shew that the decision of these controversies cannot belong to any king, but to the peo-

ple, we are only to consider, that as kings and all other magistrates, whether supreme or subordinate, are constituted only for the good of the people, the people only can be fit to judge whether the end be accomplished. A physician does not exercise his art for himself but for his patients; and when I am, or think I shall be, sick, I send for him of whom I have the best opinion, that he may help me to recover, or preserve, my health; but I lay him aside if I find him to be negligent, ignorant, or unfaithful; and it would be ridiculous for him to say, I make myself judge in my own case, for I only, or such as I shall consult, am fit to be the judge of it. He may be treacherous, and through corruption or malice, endeavour to poison me; or have other defects that render him unfit to be trusted; but I cannot by any corrupt passion be led wilfully to do him injustice, and if I mistake, it is only to my own hurt. The like may be said of lawyers, stewards, pilots, and generally of all that do not act for themselves, but for those who employ them. And if a company going to the Indies should find, that their pilot was mad, drunk, or treacherous, they whose lives and goods are concerned, can only be fit to judge, whether he ought to be trusted or not, since he cannot have a right to destroy those he was chosen to preserve; and they cannot be thought to judge perversely, because they have nothing to lead them but an opinion of truth, and cannot err but to their own prejudice. In the like manner, not only Solon and Draco, but Romulus, Numa, Hostilius, the consuls, dictators, and decemviri, were not distinguished from others,

that it might be well with them, "*sed ut bonum, felix, faustumque fit populo Romano*," but that the prosperity and happiness of the people might be procured; which being the thing always intended, it were absurd to refer the judgment of the performance to him who is suspected of a design to overthrow it, and whose passions, interests, and vices, if he has any, lead him that way. If king James said any thing contrary to this, he might be answered with some of his own words:* "I was," says he, "sworn to maintain the laws of the land, and therefore had been perjured if I had broken them."† It may also be presumed, he had not forgotten what his master Buchanan had taught in the books he wrote chiefly for his instruction,‡ that the violation of the laws of Scotland could not have been so fatal to most of his predecessors, kings of that country (nor as he himself had made them to his mother) if kings were above them.

* Speech in Star-chamber, 1616. † Hist. Scot.

‡ De jure reg. apud Scot.

SECTION XV.

A GENERAL PRESUMPTION THAT KINGS WILL GOVERN WELL, IS NOT A SUFFICIENT SECURITY TO THE PEOPLE.

"BUT," says our author, "yet will they rule their subjects by the law; and a king governing in a settled kingdom, leaves being king, and degenerates into a tyrant, so soon as he ceases to rule according unto his laws: yet where he sees them rigorous or doubtful, he may mitigate or interpret." This is therefore an effect of their goodness; they are above laws, but will rule by law, we have Filmer's word for it. But I know not how nations can be assured their princes will always be so good: goodness is always accompanied with wisdom, and I do not find those admirable qualities to be generally inherent or entailed upon supreme magistrates. They do not seem to be all alike, and we have not hitherto found them all to live in the same spirit and principle. I can see no resemblance between Moses and Caligula, Joshua and Claudius, Gideon and Nero, Samson and Vitellius, Samuel and Otho, David and Domitian; nor indeed between the best of these and their own children. If the sons of Moses and Joshua had been like to them in wisdom, valour, and integrity, it is probable they had been chosen to succeed

them; if they were not, the like is less to be presumed of others. No man has yet observed the moderation of Gideon to have been in Abimelech; the piety of Eli in Hophni and Phinehas; the purity and integrity of Samuel in Joel and Abiah, nor the wisdom of Solomon in Rehoboam. And if there was so vast a difference between them and their children, who doubtless were instructed by those excellent men in the ways of wisdom and justice, as well by precept as example, were it not madness to be confident, that they who have neither precept nor good example to guide them, but, on the contrary, are educated in an utter ignorance or abhorrence of all virtue, will always be just and good? or to put the whole power into the hands of every man, woman, or child, that shall be born in governing families, upon a supposition, that a thing will happen, which never did? or that the weakest and worst will perform all that can be hoped, and was seldom accomplished, by the wisest and best, exposing whole nations to be destroyed without remedy, if they do it not? And if this be madness in all extremity, it is to be presumed, that nations never intended any such thing, unless our author proves, that all nations have been mad from the beginning, and must always continue to be so. To cure this, he says, "they degenerate into tyrants;" and if he meant as he speaks, it would be enough. For a king cannot degenerate into a tyrant by departing from that law, which is only the product of his own will. But if he does degenerate, it must be by departing from that, which does not depend upon his will, and is a

rule prescribed by a power that is above him. This indeed is the doctrine of Bracton, who, having said, that the power of the king is the power of the law, because the law makes him king, adds, "* that if he does injustice, he ceases to be king, degenerates into a tyrant, and becomes the vicegerent of the devil." But I hope this must be understood with moderation, and a due consideration of human frailty, so as to mean only those injuries that are extreme; for otherwise he would terribly shake all the crowns of the world.

But lest our author should be thought once in his life to have dealt sincerely, and spoken truth, the next lines shew the fraud of his last assertion, by giving to the prince a power of "mitigating or interpreting the laws, that he sees to be rigorous or doubtful." But as he cannot degenerate into a tyrant by departing from the law, which proceeds from his own will, so he cannot mitigate or interpret that which proceeds from a superior power, unless the right of mitigating or interpreting be conferred upon him by the same. For as all wise men confess that "† none can abrogate, but those who may institute," and that all mitigation and interpretation varying from the true sense is an alteration, that alteration is an abrogation; for ‡ whatsoever is changed, is dis-

* Quia si faciat injuriam, desinit esse rex, et degenerat in tyrannum, & fit vicarius diaboli. BRACT.

† Cujus est instituere, ejus est abrogare.

‡ Quicquid mutatur, dissolvitur: interit ergo.

solved: and therefore the power of mitigating is inseparable from that of instituting. This is sufficiently evinced by Henry the Eighth's answer to the speech made to him by the speaker of the House of Commons 1545, in which he, though one of the most violent princes we ever had, confesses the Parliament to be the law-makers, and that an obligation lay upon him rightly to use the power with which he was entrusted. The right, therefore, of altering being inseparable from that of making laws, the one being in the Parliament, the other must be so also. Fortescue says plainly, the king cannot change any law: *magna charta* casts all upon* the laws of the land, and customs of England: but to say, that the king can by his will make that to be a custom, or an ancient law, which is not, or that not to be so which is, is most absurd. He must, therefore, take the laws and customs as he finds them, and can neither detract from, nor add any thing to, them. The ways are prescribed as well as the end. Judgments are given by equals, "*per pares.*" The judges, who may be assisting to those, are sworn to proceed according to law, and not to regard the king's letters or commands. The doubtful cases are reserved, and to be referred to the Parliament, as in the statute of 35 Edward III. concerning treasons, but never to the king. The law intending that these parliaments should be annual, and leaving to the king a power of calling them more often, if occasion requires, takes away all pretence of a necessity, that there should be any other power to interpret or mitigate laws. For

* Leges terræ, & consuetudines Angliæ.

it is not to be imagined, that there should be such a pestilent evil in any ancient law, custom, or later act of Parliament, which, being on the sudden discovered, may not without any great prejudice continue for forty days, till a Parliament may be called; whereas the force and essence of all laws would be subverted, if, under colour of mitigating and interpreting, the power of altering were allowed to kings, who often want the inclination, and for the most part the capacity, of doing it rightly. It is not, therefore, upon the uncertain will or understanding of a prince, that the safety of the nation ought to depend. He is sometimes a child, and sometimes overburdened with years. Some are weak, negligent, slothful, foolish, or vicious; others, who may have something of rectitude in their intentions, and naturally are not uncapable of doing well, are drawn out of the right way by the subtlety of ill men, who gain credit with them. That rule must always be uncertain, and subject to be distorted, which depends upon the fancy of such a man. He always fluctuates, and every passion that arises in his mind, or is infused by others, disorders him. The good of a people ought to be established upon a more solid foundation. For this reason, the law is established which no passion can disturb. It is void of desire and fear, lust and anger. It is "*mens sine affectu*," written reason, retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man; but, without any regard to persons, commands that which is good, and punishes evil in all, whether rich or poor, high or low. It is deaf, inexorable, inflexible.

By this means, every man knows when he is safe, or in danger, because he knows whether he has done good or evil. But if all depended upon the will of a man, the worst would be often the most safe, and the best in the greatest hazard; slaves would be often advanced, the good and the brave scorned and neglected. The most generous nations have, above all things, sought to avoid this evil; and the virtue, wisdom, and generosity of each, may be discerned by the right fixing of the rule that must be the guide of every man's life, and so constituting their magistracy that it may be duly observed. Such as have attained to this perfection, have always flourished in virtue and happiness; they are, as Aristotle says, governed by God, rather than by men, whilst those who subject themselves to the will of a man, are governed by a beast.

This being so, our author's next clause, that "though a king does frame all his actions to be according unto law, yet he is not bound thereunto, but as his good will, and for good example, or so far forth as the general law, for the safety of the commonwealth, doth naturally bind him," is wholly impertinent. For if the king, who governs not according to law, degenerates into a tyrant, he is obliged to frame his actions according to law, or not to be a king; for a tyrant is none, but as contrary to him, as the worst of men is to the best. But if these obligations were united, we may easily guess, what security our author's words can be to us, that the king of his own good will, and for a good

example, will frame his actions according to the laws; when experience instructs us, that notwithstanding the strictest laws, and most exquisite constitutions, that men of the best abilities in the world could ever invent to restrain the irregular appetites of those in power, with the dreadful examples of vengeance taken against such as would not be restrained, they have frequently broken out; and the most powerful have, for the most part, no otherwise distinguished themselves from the rest of men, than by the enormity of their vices, and being the most forward in leading others to all manner of crimes by their example.

SECTION XVI.

THE OBSERVATION OF THE LAWS OF NATURE IS ABSURDLY EXPECTED FROM TYRANTS, WHO SET THEMSELVES UP AGAINST ALL LAWS: AND HE THAT SUBJECTS KINGS TO NO OTHER LAW THAN WHAT IS COMMON TO TYRANTS, DESTROYS THEIR BEING.

Our author's last clause, acknowledging kings to be bound by a general law to provide for the safety of the people, would be sufficient for my purpose, if it were sincere; for municipal laws do only shew how that should be performed; and if the king by departing from that rule, degenerates, as he says, into

a tyrant, it is easily determined what ought then to be done by the people. But his whole book being a heap of contradictions and frauds, we can rely upon nothing that he says: and his following words, which under the same law comprehend both kings and tyrants, shew that he intends kings should be no otherwise obliged than tyrants, which is not at all. "By this means," says he, "are all kings, even tyrants and conquerors, bound to preserve the lands, goods, liberties, and lives, of all their subjects, not by any municipal law of the land, so much as by the natural law of a father, which obligeth them to ratify the acts of their forefathers and predecessors in things necessary for the public good of their subjects." If he be, therefore, in the right, tyrants and conquerors are kings and fathers. The words that have been always thought to comprehend the most irreconcileable contrariety, the one expressing the most tender love and care, evidently testified by the greatest obligations conferred upon those who are under it; the other, the utmost of all injuries that can be offered to men, signify the same thing: there is no difference between a magistrate who is what he is by law, and a public enemy, who by force or fraud sets himself up against all law; and what he said before, that kings degenerated into tyrants, signifies nothing; for tyrants also are kings.

His next words are no less incomprehensible; for neither king nor tyrant can be obliged to preserve the lands, goods, and liberties, of their subjects, if they have none. But as liberty consists only in

being subject to no man's will, and nothing denotes a slave but a dependance upon the will of another; if there be no other law in a kingdom than the will of a prince, there is no such thing as liberty. Property is also an appendage to liberty; and it is as impossible for a man to have a right to lands or goods, if he has no liberty, and enjoys his life only at the pleasure of another, as it is to enjoy either, when he is deprived of them. He, therefore, who says kings and tyrants are bound to preserve their subjects' lands, liberties, goods, and lives, and yet lays for a foundation, that laws are no more than the significations of their pleasure, seeks to delude the world with words which signify nothing.

The vanity of these whimsies will farther appear, if it be considered, that as kings are kings by law, and tyrant are tyrants by overthrowing the law; they are most absurdly joined together; and it is not more ridiculous to set him above the law, who is what he is by the law, than to expect the observation of the laws that enjoin the preservation of the lands, liberties, goods, and lives, of the people, from one who by fraud or violence makes himself master of all, that he may be restrained by no law, and is what he is by subverting all law.

Besides, if the safety of the people be the supreme law, and this safety extends to, and consists in, the preservation of their liberties, goods, lands, and lives, that law must necessarily be the root and be-

ginning, as well as the end and limit, of all magistratical power, and all laws must be subservient and subordinate to it. The question will not then be what pleases the king, but what is good for the people; not what conduces to his profit or glory, but what best secures the liberties he is bound to preserve: he does not therefore reign for himself, but for the people; he is not the master, but the servant, of the commonwealth; and the utmost extent of his prerogative is, to be able to do more good than any private man. If this be his work and duty, it is easily seen whether he is to judge of his own performance, or they by whom, and for whom, he reigns; and whether, in order to this, he be to give laws, or to receive them. It is ordinarily said in France, "*Il faut que chacun soit servi a sa mode;*" every man's business must be done according to his own mind: and if this be true in particular persons, it is more plainly so in whole nations. Many eyes see more than one: the collected wisdom of a people much surpasses that of a single person; and though he should truly seek that which is best, it is not probable he would so easily find it, as the body of a nation, or the principal men chosen to represent the whole. This may be said with justice of the best and wisest princes that ever were; but another language is to be used, when we speak of those who may succeed, and who very often, through the defects of age, person, or sex, are neither fit to judge of other men's affairs, nor of their own; and are so far from being capable of the highest concernments relating to the safety of whole nations, that the most trivial cannot reasonably be referred to them.

There are few men (except such as are like Filmer, who by bidding defiance to the laws of God and man, seems to declare war against both) whom I would not trust to determine whether a people, that can never fall into nonage or dotage, and can never fail of having men of wisdom and virtue amongst them, be not more fit to judge in their own persons, or by representatives, what conduces to their own good, than one who at a venture may be born in a certain family, and who, besides his own infirmities, passions, vices, or interests, is continually surrounded by such as endeavour to divert him from the ways of truth and justice. And if no reasonable man dares prefer the latter before the former, we must rely upon the laws made by our forefathers, and interpreted by the nation, and not upon the will of a man.

It is in vain to say, that a wise and good council may supply the defects, or correct the vices, of a young, foolish, or ill disposed king. For Filmer denies, that a king, whatever he be, without exception (for he attributes profound wisdom to all) is obliged to follow the advice of his council; and even he would hardly have had the impudence to say, that good counsel, given to a foolish or wicked prince, were of any value, unless he were obliged to follow it. This council must be chosen by him, or imposed upon him: if it be imposed upon him, it must be by a power that is above him, which he says cannot be. If chosen by him who is weak, foolish, or wicked, it can never be good; because such virtue and wisdom is required to discern and chuse a few

good and wise men, from a multitude of foolish and bad, as he has not. And it will generally fall out, that he will take for his counsellors, rather those he believes to be addicted to his person or interests, than such as are fitly qualified to perform the duty of their places. But if he should, by chance, or contrary to his intentions, make choice of some good and wise men, the matter would not be much mended; for they will certainly differ in opinion from the worst. And though the prince should intend well, of which there is no assurance; nor any reason to put so great a power into his hands, if there be none; it is almost impossible for him to avoid the snares that will be laid to seduce him. I know not how to put a better face upon this matter: for if I examine rather what is probable than possible, foolish or ill princes will never chuse such as are wise and good; but favouring those who are most like to themselves, will prefer such as second their vices, humours, and personal interests, and, by so doing, will rather fortify and rivet the evils that are brought upon the nation through their defects, than cure them. This was evident in Rehoboam: he had good counsel, but he would not hearken to it. We know too many of the same sort; and though it were not impossible (as Machiavelli says it is) for a weak prince to receive any benefit from a good council, we may certainly conclude, that a people can never expect any good from a council chosen by one who is weak or vicious.

If a council be imposed upon him, and he be obliged to follow their advice, it must be imposed

by a power that is above him: his will, therefore, is not a law; but must be regulated by the law: the monarchy is not above the law; and if we will believe our author, it is no monarchy, because the monarch has not his will, and perhaps he says true. For if that be an aristocracy, where those that are, or are reputed to be, the best, do govern; then that is certainly a mixed state, in which the will of one man does not prevail. But if princes are not obliged by the law, all that is founded upon that supposition falls to the ground: they will always follow their own humours, or the suggestions of those who second them. Tiberius hearkened to none but Chaldeans, or the ministers of his impurities and cruelties: Claudius was governed by slaves, and the profligate strumpets, his wives. There were many wise and good men in the senate during the reigns of Caligula, Nero, and Domitian; but instead of following their counsel, they endeavoured to destroy them all, lest they should head the people against them; and such princes as resemble them will always follow the like courses.

If I often repeat these hateful names, it is not for want of fresher examples of the same nature; but I chuse such as mankind have universally condemned, against whom I can have no other cause of hatred than what is common to all those who have any love to virtue, and which can have no other relation to the controversies of latter ages, than what may flow from the similitude of their causes, rather than such as are too well known to us, and which every man ac-

cording to the measure of his experience, may call to mind in reading these. I may also add, that as nothing is to be received as a general maxim, which is not generally true, I need no more to overthrow such as Filmer proposes, than to prove how frequently they have been found false, and what desperate mischiefs have been brought upon the world as often as they have been practised, and excessive powers put into the hands of such as had neither inclination nor ability to make a good use of them.

1. But if the safety of nations be the end for which governments are instituted, such as take upon them to govern, by what title soever, are by the law of nature bound to procure it; and in order to this, to preserve the lives, lands, liberties, and goods, of every one of their subjects: and he that, upon any title whatsoever, pretends, assumes, or exercises a power of disposing of them according to his will, violates the laws of nature in the highest degree.

2. If all princes are obliged, by the law of nature, to preserve the lands, goods, lives, and liberties, of their subjects, those subjects have, by the law of nature, a right to their liberties, lands, goods, &c. and cannot depend upon the will of any man; for that dependance destroys liberty, &c.

3. Ill men will not, and weak men cannot, provide for the safety of the people; nay, the work is of such extreme difficulty that the greatest and wisest men that have been in the world are not able, by

themselves, to perform it; and the assistance of counsel is of no use, unless princes are obliged to follow it. There must be, therefore, a power in every state to restrain the ill, and to instruct weak princes, by obliging them to follow the counsels given, else the ends of government cannot be accomplished, nor the rights of nations preserved.

All this being no more than is said by our author, or necessarily to be deduced from his propositions, one would think he were become as good a commonwealth's-man as Cato; but the washed swine will return to the mire. He overthrows all by a preposterous conjunction of the rights of kings, which are just, and by law, with those of tyrants, which are utterly against law; and gives the sacred and gentle name of father to those beasts, who by their actions declare themselves enemies not only to all law and justice, but to mankind, that cannot subsist without them. This requires no other proof, than to examine whether Attila or Tamerlane did well deserve to be called fathers of the countries they destroyed. The first of these was usually called the scourge of God, and he gloried in the name. The other, being reproved for the detestable cruelties he exercised, made answer, "You speak to me as to a man: I am not a man, but the scourge of God, and plague of mankind."* This is certainly sweet and gentle language, savouring much of a fatherly tenderness; no doubt, those who use it will provide for the

* Vit. Tamerl. Hist. Thuan.

safety of the nations under them, and the preservation of the laws of nature is rightly referred to them; and it is very probable that they who came to burn the countries, and destroy the nations, that fell under their power, should make it their business to preserve them, and look upon the former governors "as their fathers, whose acts they were obliged to confirm," though they seldom attained to the dominion by any other means, than the slaughter of them and their families.

But if the enmity be not against the nation, and the cause of the war be only for dominion against the ruling person or family, as that of Baasha against the house of Jeroboam, of Zimri against that of Baasha, of Omri against Zimri, and of Jehu against Joram, the prosecution of it is a strange way of becoming the son of the person destroyed. And Filmer alone is subtile enough to discover, that Jehu, by extinguishing the house of Ahab, drew an obligation upon himself, of looking on him as his father, and confirming his acts. If this be true, Moses was obliged to confirm the acts of the kings of the Amalekites, Moabites, and Amorites, that he destroyed; the same duty lay upon Joshua, in relation to the Canaanites: but it is not so easily decided, to which of them he did owe that deference; for the same could not be due to all, and it is hard to believe, that by killing above thirty kings, he should purchase to himself so many fathers; and the like may be said of divers others.

Moreover, there is a sort of tyrant who has no father, as Agathocles, Dionysius, Cæsar, and generally all those who subvert the liberties of their own country. And if they stood obliged to look upon the former magistrates as their predecessors, and to confirm their acts, the first should have been to give impunity and reward to any that would kill them, it having been a fundamental maxim in those states, "*that any man might kill a tyrant."

This being in all respects ridiculous and absurd, it is evident that our author, who, by proposing such a false security to nations for their liberties, endeavours to betray them, is not less treacherous to kings, when, under a pretence of defending their rights, he makes them to be the same with those of tyrants, who are known to have none (and are tyrants, because they have none); and gives no other hopes to nations of being preserved by the kings they set up for that end, than what upon the same account may be expected from tyrants, whom all wise men ever abhorred, and affirmed to have been "produced† to bring destruction upon the world," and whose lives have verified the sentence.

This is truly to depose and abolish kings, by abolishing that, by which, and for which, they are so. The greatness of their power, riches, state, and the

* Unicuique licere tyrannum occidere.

† In generis humani exitium natos.

pleasures that accompany them, cannot but create enemies. Some will envy that which is accounted happiness; others may dislike the use they make of their power; some may be unjustly exasperated by the best of their actions, when they find themselves incommoded by them; others may be too severe judges of slight miscarriages. These things may reasonably temper the joys of those, who delight most in the advantages of crowns. But the worst and most dangerous of all their enemies are these accursed sycophants, who, by making those that ought to be the best of men, like to the worst, destroy their being; and by persuading the world they aim at the same things, and are bound to no other rule than is common to all tyrants, give a fair pretence to ill men to say, they are all of one kind. And if this should be received for truth, even they who think the miscarriages of their governors may be easily redressed, and desire no more, would be the most fierce in procuring the destruction of that, which is naught in principle, and cannot be corrected.

SECTION XVII.

KINGS CANNOT BE THE INTERPRETERS OF THE OATHS THEY TAKE.

Our author's book is so full of absurdities and contradictions that it would be a rope of sand, if a

continued series of frauds did not, like a string of poisons running through the whole, give it some consistence with itself, and shew it to be the work of one and the same hand. After having endeavoured to subvert the laws of God, nature, and nations, most especially our own, by abusing the scriptures, falsely alledging the authority of many good writers, and seeking to obtrude upon mankind a universal law, that would take from every nation the right of constituting such governments within themselves, as seem most convenient for them, and giving rules for the administration of such as they had established, he gives us a full view of his religion and morals, by destroying the force of the oath taken by our kings at their coronation. "Others," says he, "affirm, that although laws of themselves do not bind kings, yet the oaths of kings at their coronation tie them to keep all the laws of their kingdoms. How far this is true, let us but examine the oath of the kings of England at their coronation; the words whereof are these: Art thou pleased to cause to be administered in all thy judgments, indifferent and upright justice, and to use discretion with mercy and verity? Art thou pleased, that our upright laws and customs be observed? And dost thou promise, that those shall be protected and maintained by thee?" &c. To which the king "answers in the affirmative, being first demanded by the archbishop of Canterbury, Pleaseth it you, to confirm and observe the laws and customs of the ancient times, granted from God by just and devout kings unto the English nation by oath unto the said people, especially the laws, liberties, and customs, granted

unto the clergy and laity by the famous king Edward?" From this he infers, that the king "is not to observe all laws, but such as are upright, because he finds evil laws mentioned in the oath of Richard the Second, which he swears to abolish: now what laws are upright, and what evil, who shall judge but the king? &c. So that in effect the king doth swear to keep no laws but such as in his judgment are upright, &c. And if he did strictly swear to observe all laws, he could not without perjury give his consent to the repealing or abrogating of any statute by act of Parliament," &c. And again, "But, let it be supposed for truth, that kings do swear to observe all laws of their kingdoms; yet no man can think it reason, that the kings should be more bound by their voluntary oaths than common persons: now if a private person make a contract, either with oath, or without oath, he is no further bound than the equity and justice of the contract ties him; for a man may have relief against an unreasonable and unjust promise, if either deceit or error, force or fear, induced him thereunto; or if it be hurtful or grievous in the performance, since the law in many cases gives the king a prerogative above common persons." Lest I should be thought to insist upon small advantages, I will not oblige any man to shew where Filmer found this oath, nor observe the faults committed in the translation; but notwithstanding his false representation, I find enough for my purpose, and intend to take it in his own words. But first I shall take leave to remark, that those who, for private interests, addict themselves to the per-

sonal service of princes, though to the ruin of their country, find it impossible to persuade mankind, that kings may govern as they please, when all men know there are laws to direct and restrain them, unless they can make men believe they have their power from a universal and superior law; or that princes can attempt to dissolve the obligations laid upon them by the laws, which they so solemnly swear to observe, without rendering themselves detestable to God and man, and subject to the revenging hands of both, unless they can invalidate those oaths. Mr. Hobbes, I think, was the first who very ingeniously contrived a compendious way* of justifying the most abominable perjuries, and all the mischiefs ensuing thereupon, by pretending, that as the king's oath is made to the people, the people may absolve him from the obligation; and that the people having conferred upon him all the power they had, he can do all that they could: he can therefore absolve himself, and is actually free, since he is so when he pleases. This is not false in the minor: for the people not having conferred upon him all, but only a part, of their power, that of absolving him remains in themselves, otherwise they would never have obliged him to take the oath. He cannot therefore absolve himself. The Pope finds a help for this, and, as Christ's vicar, pretends the power of absolution to be in him, and exercised it in absolving king John. But our author, despairing to impose either of these upon our age and nation, with

* Lib. de cive

more impudence, and less wit, would enervate all coronation oaths by subjecting them to the discretion of the taker;* whereas all men have hitherto thought their force to consist in the declared sense of those who give them. This doctrine is so new, that it surpasses the subtilty of the schoolmen, who, as an ingenious person said of them, had minced oaths so fine, that a million of them, as well as angels, may stand upon the point of a needle; and were never yet equalled but by the Jesuits, who have overthrown them by mental reservations, which is so clearly demonstrated from their books, that it cannot be denied; but so horrible, that even those of their own order, who have the least spark of common honesty, condemn the practice. And one of them, being a gentleman of a good family, told me, he would go the next day and take all the oaths that should be offered, if he could satisfy his conscience in using any manner of equivocation, or mental reservation; or that he might put any other sense upon them, than he knew to be intended by those who offered them. And if our author's conscience were not more corrupted than that of the Jesuit, who had lived fifty years under the worst discipline that I think ever was in the world, I would ask him seriously, if he truly believes, that the nobility, clergy, and commonality of England, who have been always

* Verba jurantis obligare in sensu quo ea creditur accepisse cui juratum est....dictis ipsis testem adhibens Deum, debet dicta facere vera quomodo putat intelligi. Grotius de jure B. & P. l. ii. c. 13.

so zealous for their ancient laws, and so resolute in defending them, did mean no more by the oaths they so solemnly imposed, and upon which they laid so much weight, than that the king should swear to keep them, so far only as he should think fit. But "he swears only to observe those that are upright," &c. How can that be understood otherwise, than that those who give the oath, do declare their laws and customs to be upright and good, and he by taking the oath affirms them to be so? Or, how can they be more precisely specified than by the ensuing clause, "Granted from God by just and devout kings by oath, especially those of the famous king Edward?" But, says he, by the same oath "Richard the Second was bound to abolish those that were evil." If any such had crept in through error, or been obtruded by malice, the evil being discovered and declared by the nobility and commons who were concerned, he was not to take advantage of them, or by his refusal to evade the abolition, but to join with his people in annulling them, according to the general clause of assenting to those, "*quas vulgus elegerit.*"

Magna charta being only an abridgment of our ancient laws and customs, the king that swears to it, swears to them all; and not being admitted to be the interpreter of it, or to determine what is good or evil, fit to be observed or annulled in it, can have no more power over the rest. This having been confirmed by more parliaments than we have had kings since that time, the same obligation must still lie upon

them all, as upon John and Henry, in whose time that claim of right was compiled. The act was no less solemn than important; and the most dreadful curses that could be conceived in words, which were denounced against such as should any way infringe it, by the clergy in Westminster-hall, in the presence, and with the assent, of King Henry the Third, many of the principal nobility, and all the estates of the kingdom, shew whether it was referred to the king's judgment or not; when it is evident they feared the violation from no other than himself, and such as he should employ. I confess the church (as they then called the clergy) was fallen into corruption, that their arms were not much to be feared by one who had his conscience clear; but that could not be in the case of perjury; and our ancestors could do no better, than to employ the spiritual sword, reserving to themselves the use of the other, in case that should be despised. Though the Pope's excommunications proved sometimes to be but "*bruta fulmina*," when a just cause was wanting, it may be easily judged what obedience a prince could expect from his subjects, when every man knew he had by perjury drawn the most heavy curses upon himself. King John was certainly wicked, but he durst not break these bonds till he had procured the Pope's absolution for a cover; and when he had done so, he found himself unsafe under it, and could not make good what he had promised to the Pope to obtain it, the Parliament declaring, that his grants to the Pope were unjust, illegal, contrary to his coronation-oath, and that they would not be held by them. This went so

far in that king's time, that writs were issued out to men of all conditions to oblige themselves by oath to keep the great charter: and if other means failed, "* to compel the king to perform the conditions." It is expressly said in his charter, "† That the barons and commonalty of the land shall straiten and compel us by all means possible, as by seizing our towns, lands, and possessions, or any other way, till satisfaction be made according to their pleasure." And in the charter of his son Henry, it is, upon the same supposition of not performing the agreement, said, "‡ It shall be lawful for all men in our kingdom to rise up against us, and to do all things that may be grievous to us, as if they were absolutely free from any engagements to our person." These words seem to have been contrived to be so full and strong "*propter duplicitatem regis*," which was with too much reason suspected. And it is not, as I suppose, "the language of slaves, and villains begging something from their lord, but of noble and free men who knew their lord was no more than what they

* Et quod ipsum regem per captionem distringerent & gravarent ad præfata exequenda.

† Et ipsi barones cum communitate totius terræ distringent & gravabunt nos modis omnibus quibus poterunt, scilicet per captionem castrorum, terrarum, possessionem, & aliis modis quibus potuerint, donec emndatum fuerit secundum arbitrium eorum.

‡ Licet omnibus de regno nostra contra nos insurgere, & omnia facere que gravamen nostrum respiciant, ac si nobis in nullo tenerentur.

made him, and had nothing but what they gave him ;" nor the language of a lord treating with such as enjoyed their liberties by his favour, but with those whom he acknowledged to be the judges of his performing what had been stipulated: and equals the agreements made between the kings and people of Arragon, which I cited before from the relations of Antonio Perez. This is as far as men can go; and the experience of all ages manifests, that princes, performing their office, and observing these stipulations, have lived glorious, happy, and beloved: and I can hardly find an example of any who have notoriously broken these oaths, and been adjudged to have incurred the penalties, who have not lived miserably, died shamefully, and left an abominable memory to posterity.

" But," says our author, " kings cannot be more obliged by voluntary oaths than other men, and may be relieved from unjust and unreasonable promises, if they be induced by deceit, error, force, or fear, or the performance be grievous." Which is to say, that no oath is of any obligation: for there is none that is not voluntary, or involuntary; and there never was any, upon which some such thing may not be pretended; which would be the same, if such as Filmer had the direction of their consciences who take the oaths, and of those who are to exact the performance. This would soon destroy all confidence between king and people, and not only unhinge the best established governments, but, by a detestable practice of annihilating the force of oaths, and most

solemn contracts, that can be made by men, overthrow all societies that subsist by them. I leave it to all reasonable men to judge how fit a work this would be for the supreme magistrate, who is advanced to the highest degree of human glory and happiness, that he may preserve them; and how that justice, for the obtaining of which governments are constituted, can be administered, if he who is to exact it from others, does in his own person utterly subvert it: and what they deserve who, by such base prevarications, would teach them to pervert and abolish the most sacred of all contracts. A worthy person of our age was accustomed to say, that contracts in writing were invented only to bind villains, who having no law, justice, or truth, within themselves, would not keep their words unless such testimonies were given as might compel them. But if our author's doctrine were received, no contract would be of more value than a cobweb.* Such as are not of a profligate conscience, so far reverence the religion of an oath, as to think that even those which are most unjustly and violently imposed ought to be observed; and Julius Cæsar, who I think was not over scrupulous, when

* Qui juravit Deo, obligetur stare jurejurando....non enim persona sola respicitur cui juratur, sed is qui juratur, Deus.... repudiandus ergo Cicero, cum ait perjurium nullum esse, si prædonibus pactum, &c. Grotius de jure B. and P. l. ii. c. 13, p. 14, 15. Ipse, qui juratus aliquid promisit nocenti, qua talis est puta piratæ, non potest jus promisso quæsitum poenæ nomine ob id ipsum ei auferre: quia tunc verba nullum haberent effectum, quod omnino vitandum est. p. 20. 3. The arguments Puffendorf brings against Grotius see de jure nat. l. iv. c. 2.

he was taken by pirates, and set at liberty upon his word, caused the ransom he had promised to be paid to them. We see the like is practised every day by prisoners taken in unjust as well as just wars: and there is no honest man that would not abhor a person, who, being taken by the pirates of Algiers, would not pay what he had promised for his liberty. It were in vain to say they had no right of exacting, or that the performance was grevious, he must return to the chains, or pay. And though the people of Artois, Alsatia, or Flanders, do perhaps, with reason, think the king of France has no right to impose oaths of allegiance upon them, no man doubts, that if they chuse rather to take those oaths, than to suffer what might ensue upon their refusal, they are as much bound to be faithful to him as his ancient subjects.

The like may be said of promises extorted by fraud;* and no other example is necessary to prove they are to be performed than that of Joshua made to the Gibeonites. They were an accursed nation, which he was commanded to destroy; they came to him with lies, and by deceit induced him to make a league with them, which he ought not to have done; but being made, it was to be performed; and on that account he did not only spare but defend them, and the action was approved by God. When Saul, by a preposterous zeal violated that league, the anger of God for that breach of faith

* Grotius l. ii. c. 13, 14.

could no otherwise be appeased than by the death of seven of his children. This case is so full, so precise, and of such undoubted authority, that I shall not trouble myself with any other. But if we believe our man of good morals, voluntary oaths and promises are of no more value than those gained by force or deceit, that is to say, none are of any. For voluntary signifying nothing but free, all human acts are either free or not free, that is, from the will of the person, or some impulse from without. If, therefore, there be no force in those that are free, nor in those that are not free, there is none in any.

No better use can be made of any "pretension of error," or that the "performance was grievous;" for no man ought to be grieved at the performance of his contract. David assures us, that a good man performs his agreement, though he loses by it; and the lord chancellor Egerton told a gentleman, who desired relief against his own deed, upon an allegation that he knew not what he did when he signed it, that he did not sit to relieve fools.

But though voluntary promises or oaths, when, to use the lawyers' language, there is not a valuable consideration, were of no obligation; or that men brought by force, fear, or error, into such contracts as are grievous in the performance, might be relieved: this would not at all reach the case of princes, in the contracts made between them and their subjects, and confirmed by their oaths, there being no colour of force or fraud, fear or error, for them to

alledge; nor any thing to be pretended that can be grievous to perform, otherwise than as it may be grievous to an ill man not to do the mischiefs he had conceived.

Nations, according to their own will, frame the laws by which they resolve to be governed; and if they do it not wisely, the damage is only to themselves: but it is hard to find an example of any people that did by force oblige a man to take upon him the government of them. Gideon was indeed much pressed by the Israelites to be their king; and the army of Germanicus, in a mutiny, more fiercely urged him to be emperor; but both desisted when their offers were refused. If our kings have been more modest, and our ancestors more pertinacious in compelling them to accept the crowns they offered, I shall, upon proof of the matter, change my opinion. But till that does appear, I may be pardoned if I think there was no such thing. William the Norman was not by force brought into England, but came voluntarily, and desired to be king: the nobility, clergy, and commons, proposed the conditions upon which they would receive him. These conditions were to govern according to their ancient laws, especially those that had been granted, or rather collected in the time of the famous king Edward. Here was neither force nor fraud; if he had disliked the terms, he might have retired as freely as he came. But he did like them; and though he was not, perhaps, so modest, to say with the brave Saxon king Offa, "*Ad libertatis vestræ tuitionem*,

non meis meritis, sed sola liberalitate vestra, unanimiter me convocastis,"* he accepted the crown upon conditions offered, and swore upon the evangelists to observe them. Not much valuing this, he pretended to govern according to his own will; but finding the people would not endure it, he renewed his oath upon the same evangelists, and the reliques of St. Alban, which he needed not to have done, but might have departed to his dutchy of Normandy if he had not liked the conditions, or thought not fit to observe them. It is probable he examined the contents of Edward's laws before he † swore to them, and could not imagine, that a free nation, which never had any other kings than such as had been chosen by themselves for the preservation of their liberty, and from whose liberality the best of their kings acknowledged the crowns they wore, did intend to give up their persons, liberties, and estates to him, who was a stranger, most especially when they would not receive him till he had sworn to the same laws by which the others had reigned, of which one was (as appears by the act of Conventus Panangliicus) that "*reges a sacerdotibus & senioribus populi eligantur*, the kings should be elected by the clergy and elders of the people." By these means he was advanced to the crown, to which he could have no title, unless they had the right of conferring

* Addit. Matt. Par.

† Bonas & approbatas antiquas regni leges, quas sancti & pii reges ejus ontecessores, & maxime Edvardus statuit, inviolabiliter observare.

it upon him. Here was, therefore, no force, deceit, nor error; and whatsoever equity there might be to relieve one that had been forced, frightened, or circumvented, it was nothing to this case. We do not find, that William II. or Henry, were forced to be kings; no sword was put to their throats; and, for any thing we know, the English nation was not then so contemptible but men might have been found in the world, who would willingly have accepted the crown, and even their elder brother Robert would not have refused: but the nobility and commons, trusting to their oaths and promises, thought fit to prefer them before him; and when he had endeavoured to impose himself upon the nation by force, they so severely punished him, that no better proof can be required to shew, that they were accustomed to have no other kings than such as they approved. And this was one of the customs that all their kings swore to maintain, it being as ancient, just, and well approved, as any other.

Having already proved, that all the kings we have had since that time, have come in upon the same title; that the Saxon laws, to which all have sworn, continue to be of force amongst us, and that the words pronounced four times, on the four sides of the scaffold, by the archbishop, "Will you have this man to reign?" do testify it; I may spare the pains of a repetition, and justly conclude, that if there was neither force nor fraud, fear nor error, to be pretended by the first, there could be none in those that followed.

But the "observation of this oath may be grievous." If I received money the last year upon bond, promise, or sale of a manor or farm, can it be thought grievous to me to be compelled to repay, or to make over the land according to my agreement? Or if I did not seal the bond till I had the money, must not I perform the condition, or at the least restore what I had received? If it be grievous to any king to preserve the liberties, lives, and estates, of his subjects, and to govern according to their laws, let him resign the crown, and the people to whom the oath was made, will probably release him. Others may possibly be found who will not think it grievous: or if none will accept a crown, unless they may do what they please, the people must bear the misfortune of being obliged to govern themselves, or to institute some other sort of magistracy, that will be satisfied with a less exorbitant power. Perhaps they may succeed as well as some others have done, who, without being brought to that necessity, have voluntarily cast themselves into the misery of living without the majestic splendour of a monarch: or, if that fail, they may, as their last refuge, surrender up themselves to slavery. When that is done, we will acknowledge, that whatsoever we have is derived from the favour of our master. But no such thing yet appearing amongst us, we may be pardoned, if we think we are free men governed by our own laws, and that no man has a power over us, which is not given and regulated by them; nor that any thing but a new law made by ourselves, can exempt our

kings from the obligation of performing their oaths taken, to govern according to the old, in the true sense of the words, as they are understood in our language by those who give them, and conducing to the ends for which they are given, which can be no other, than to defend us from all manner of arbitrary power, and to fix a rule to which we are to conform our actions, and from which, according to our deserts, we may expect reward or punishment. And those who by prevarications, cavils, or equivocations, endeavour to dissolve these obligations, do either maliciously betray the cause of kings, by representing them to the world as men, who prefer the satisfaction of their irregular appetites before the performance of their duty, and trample under foot the most sacred bonds of human society; or from the grossest ignorance do not see, that by teaching nations how little they can rely upon the oaths of their princes, they instruct them as little to observe their own; and that not only, because men are generally inclined to follow the examples of those in power, but from a most certain conclusion that he who breaks his part of a contract, cannot, without the utmost impudence and folly, expect the performance of the other; nothing being more known amongst men, than, that all contracts are of such mutual obligation, that he who fails of his part, discharges the other. If this be so between man and man, it must needs be so between one and many millions of men: if he were free, because he says he is, every man must be free also when he pleases: if a private man, who receives no benefit, but perhaps prejudice, from a con-

tract, be obliged to perform the conditions, much more are kings, who receive the greatest advantages the world can give. As they are not by themselves, nor for themselves, so they are not different in species from other men: they are born, live, and die, as we all do. The same law of truth and justice is given to all by God and nature; and perhaps I may say, the performance of it is most rigorously exacted from the greatest of men. The liberty of perjury cannot be a privilege annexed to crowns; and it is absurd to think, that the most venerable authority that can be conferred upon a man, is increased by a liberty to commit, or impunity in committing, such crimes, as are the greatest aggravations of infamy to the basest villains in the world.

SECTION XVIII.

THE NEXT IN BLOOD TO DECEASED KINGS CANNOT GENERALLY BE SAID TO BE KINGS TILL THEY ARE CROWNED.

It is hereupon usually objected, that kings do not come in by contract, nor by oath; but are kings by, or according to proximity of blood, before they are crowned. Though this be a bold proposition, I will not say it is universally false. It is impossible, that in some places the rule of succession may be set

down so precisely, that, in some cases, every man may be able to see and know the sense, as well as the person designed to be the successor: but before I acknowledge it to be universally true, I must desire to know what this rule of succession is, and from whence it draws its original.

I think I may be excused, if I make these scruples, because I find the thing in dispute to be variously adjudged in several places; and have observed five different manners of disposing crowns esteemed hereditary, besides an infinite number of collateral controversies arising from them, of which we have divers examples; and if there be one universal rule appointed, one of these only can be right, and all the others must be vicious. The first gives the inheritance to the eldest male of the eldest legitimate line, as in France, according to that which they call the salique law. The second, to the eldest legitimate male of the reigning family, as anciently in Spain, according to which the brother of the deceased king has been often, if not always, preferred before the son, if he were elder, as may appear by the dispute between Corbis and Orsua, cited before from Titus Livius; and in the same country, during the reign of the Goths, the eldest male succeeded, whether legitimate or illegitimate. The fourth receives females, or their descendants, without any other condition distinguishing them from males, except that the younger brother is preferred before the elder sister, but the daughter of the elder brother is preferred before the son of the younger. The fifth

gives the inheritance to females under a condition, as in Sweden, where they inherit, unless they marry out of the country without the consent of the estates; according to which rule, Charles Gustavus was chosen, as any stranger might have been, though son to a sister of Gustavus Adolphus, who, by marrying a German prince, had forfeited her right. And by the same act of estates, by which her eldest son was chosen, and the crown entailed upon the heirs of his body, her second son, the prince Adolphus, was wholly excluded.

Till these questions are decided by a judge of such an undoubted authority, that all men may safely submit, it is hard for any man, who really seeks the satisfaction of his conscience, to know whether the law of God and nature (though he should believe there is one general law) do justify the custom of the ancient* Medes and Sabeans, mentioned by the poet, who admitted females, as those of France, which totally exclude them as unfit to reign over men, and utterly unable to perform the duty of a supreme magistrate, as we see they are every where excluded from the exercise of all other offices in the commonwealth. If it be said that we ought to follow the customs of our own country, I answer, that those of our own country deserve to be observed, because they are of our own country: but they are no more to be

* ..... Medis levibusque Sabæis
Imperat hic sexus, reginarumque sub armis
Barbaries pars magna jacet. LUCAN.

called the laws of God and nature than those of France or Germany; and though I do not believe, that any general law is appointed, I wish I were sure that our customs in this point were not more repugnant to the light of nature, and prejudicial to ourselves, than those of some other nations. But if I should be so much of an Englishman, to think the will of God to have been more particularly revealed to our ancestors, than to any other nation, and that all of them ought to learn from us; yet it would be difficult to decide many questions that may arise. For though the parliament, in the thirty-sixth of Henry the Sixth, made an act in favour of Richard duke of York, descended from a daughter of Mortimer, who married the daughter of the duke of Clarence, elder brother to John of Gaunt, they rather asserted their own power of giving the crown to whom they pleased, than determined the question. For if they had believed that the crown had belonged to him by a general and eternal law, they must immediately have rejected Henry as an usurper, and put Richard into the possession of his right, which they did not. And though they did something like to this in the cases of Maud the empress, in relation to king Stephen, and her son Henry the Second; and of Henry the Seventh in relation to the house of York, both before he had married a daughter of it, and after her death; they did the contrary in the cases of William the First and Second, Henry the First, Stephen, John, Richard the Third, Henry the Second, Mary, Elizabeth, and others. So that, for any thing I can yet find, it is equally difficult to discover the true

sense of the law of nature, that should be a guide to my conscience, whether I so far submit to the laws of my country, to think, that England alone has produced men that rightly understand it, or examine the laws and practices of other nations.

Whilst this remains undecided, it is impossible for me to know to whom I owe the obedience that is exacted from me. If I were a Frenchman, I could not tell whether I owed allegiance to the king of Spain, the duke of Lorrain, duke of Savoy, or many others descended from daughters of the house of Valoit, one of whom ought to inherit, if the inheritance belongs to females: or to the house of Bourbon, whose only title is founded upon the exclusion of them. The like controversies will be in all places; and he that would put mankind upon such inquiries, goes about to subvert all the governments of the world, and arms every man to the destruction of his neighbour.

We ought to be informed when this right began: if we had the genealogy of every man from Noah, and the crowns of every nation had since that time continued in one line, we were only to inquire into how many kingdoms he appointed the world to be divided, and how well the division we see at this day agrees with the allotment made by him. But mankind having for many ages lain under such a vast confusion, that no man pretends to know his own original, except some Jews, and the princes of the house of Austria, we cannot so easily arrive at the

end of our work: and the scriptures making no other mention of this part of the world, than what may induce us to think it was given to the sons of Japhet, we have nothing that can lead us to guess how it was to be subdivided, or to whom the several parcels were given: so that the difficulties are absolutely inextricable; and though it were true, that some one man had a right to every parcel that is known to us, it could be of no use; for that right must necessarily perish, which no man can prove, nor indeed claim. But as all natural rights by inheritance must be by descent, this descent not being proved, there can be no natural right: and all rights being either natural, created, or acquired, this right to crowns not being natural, must be created, or acquired, or none at all.

There being no general law common to all nations creating a right to crowns (as has been proved by the several methods used by several nations in the disposal of them, according to which all those that we know are enjoyed) we must seek the right, concerning which we dispute, from the particular constitution of every nation, or we shall be able to find none.

Acquired rights are obtained, as men say, either by fair means or by foul, that is, by force or by consent: such as are gained by force, may be recovered by force; and the extent of those that are enjoyed by consent, can only be known by the reason for which, or the conditions upon which that consent was obtained, that is to say, by the laws of every people.

According to these laws it cannot be said, that there is a king in every nation before he is crowned. John Sobietski, now reigning in Poland, had no relation in blood to the former kings, nor any title till he was chosen. The last king of Sweden acknowledged he had none, but was freely elected; and the crown being conferred upon him, and the heirs of his body, if the present king dies without issue, the right of electing a successor returns undoubtedly to the estates of that country. The crown of Denmark was elective till it was made hereditary by an act of the general diet, held at Copenhagen in the year 1660; and it is impossible, that a right should otherwise accrue to a younger brother of the house of Holstien, which is derived from a younger brother of the counts of Oldenburgh. The Roman empire having passed through the hands of many persons of different nations, no way relating to each other in blood, was by Constantine transferred to Constantinople; and, after many revolutions, coming to Theodosius, by birth a Spaniard, was divided between his two sons Arcadius and Honorius. From thence passing to such as could gain most credit with the soldiers, the western empire being brought almost to nothing, was restored by Charles the Great of France; and continuing for some time in his descendents, came to the Germans; who, having created several emperors of the houses of Suavia, Saxony, Bavaria, and others, as they pleased, about three hundred years ago chose Rodolphus of Austria: and though, since that time, they have not had any em-

peror who was not of that family; yet such as were chosen had nothing to recommend them, but the merits of their ancestors, their own personal virtues, or such political considerations as might arise from the power of their hereditary countries, which, being joined with those of the empire, might enable them to make the better defence against the Turks. But, in this line also, they have had little regard to inheritance according to blood; for the elder branch of the family is that which reigns in Spain; and the empire continues in the descendants of Ferdinand, younger brother to Charles the Fifth, though so unfixed even to this time, that the present emperor Leopold was in great danger of being rejected.

If it be said, that these are elective kingdoms, and our author speaks of such as are hereditary, I answer, that if what he says be true, there can be no elective kingdom, and every nation has a natural lord, to whom obedience is due. But if some are elective, all might have been so, if they had pleased, unless it can be proved, that God created some under a necessity of subjection, and left to others the enjoyment of their liberty. If this be so, the nations that are born under that necessity may be said to have a natural lord, who has all the power in himself, before he is crowned, or any part conferred on him by the consent of the people; but it cannot extend to others. And he who pretends a right over any nation on that account, stands obliged to shew, when and how that nation came to be discriminated by God from others, and deprived of that liberty, which

he in goodness had granted to the rest of mankind. I confess, I think there is no such right, and need no better proof than the various ways of disposing inheritances in several countries, which, not being naturally or universally better or worse one than another, cannot spring from any other root, than the consent of the several nations where they are in force, and their opinions, that such methods were best for them. But if God have made a discrimination of people, he that would thereupon ground a title to the dominion of any one, must prove that nation to be under the curse of slavery: which, for any thing I know, was only denounced against Ham; and it is as hard to determine whether the sense of it be temporal, spiritual, or both, as to tell precisely what nations, by being only descended from him, fall under the penalties threatened.

If these, therefore, be either entirely false, or impossible to be proved true, there is no discrimination, or not known to us; and every people have a right of disposing of their government, as well as the Polanders, Danes, Swedes, Germans, and such as are or were under the Roman empire. And if any nation has a natural lord before he be admitted by its consent, it must be by a peculiar act of its own; as the crown of France by an act of that nation, which they call the salique law, is made hereditary to males in a direct line, or the nearest to the direct; and others in other places are otherwise disposed.

I might rest here with a full assurance, that no disciple of Filmer can prove this of any people in the

world, nor give so much as the shadow of a reason to persuade us there is any such thing in any nation, or at least in those where we are concerned; and presume little regard will be had to what he has said, since he cannot prove of any that which he so boldly affirms of all. But because good men ought to have no other object than truth, which in matters of this importance can never be made too evident, I will venture to go farther, and assert, that as the various ways by which several nations dispose of the succession to their respective crowns, shew they were subject to no other law than their own, which they might have made different, by the same right they made it to be what it is, even those who have the greatest veneration for the reigning families, and the highest regard for proximity of blood, have always preferred the safety of the commonwealth before the concernments of any person or family; and have not only laid aside the nearest in blood, when they were found to be notoriously vicious and wicked, but when they have thought it more convenient to take others; and to prove this I intend to make use of no other examples, than those I find in the histories of Spain, France, and England.

Whilst the Goths governed Spain, not above four persons in the space of three hundred years were the immediate successors of their fathers, but the brother, cousin-german, or some other man of the families of the Balthei or Amalthei, was preferred before the children of the deceased king: and if it be said, this was according to the law of that kingdom, I answer, that it was therefore in the power of that nation to

make laws for themselves, and consequently others have the same right. * One of their kings called Wamba was deposed, and made a monk, after he had reigned well many years: but falling into a swoon, and his friends thinking him past recovery, cut off his hair, and put a monk's frock upon him, that, according to the superstition of those times, he might die in it; † and the cutting off the hair being a most disgraceful thing amongst the Goths, they would not restore him to his authority. ‡ Suintila, another of their kings, being deprived of the crown for his ill government, his children and brothers were excluded, and Sisinandus crowned in his room.

This kingdom being not long after overthrown by the Moors, a new one arose from its ashes, in the person of Don Pelayo first king of the Austrias, which, increasing by degrees, at last came to comprehend all Spain, and so continues to this day: but, not troubling myself with all the deviations from the common rule in the collateral lines of Navarre, Arragon, and Portugal, I find that by fifteen several instances in that one series of kings in the Austrias and Leon (who afterwards came to be kings of Castile) it is fully proved, that what respect soever they shewed to the next in blood, who by the law were to succeed, they preferred some other person, as often as the supreme law of "taking care, that the nation might receive no detriment," persuaded them to it.

* Saavedra coron. Goth. † Mar. hist. l. vi.
‡ Saaved. cor. Goth.

Don Pelayo enjoyed for his life the kingdom conferred upon him by the Spaniards, who with him retired into the mountains to defend themselves against the Moors, and was succeeded by his son Favila. But though Favila left many sons when he died, Alphonso, surnamed the Chaste, was advanced to the crown, and they all laid aside. Fruela, son to Alphonso the Catholic, was for his cruelty deposed, put to death, and his sons excluded.* Aurelio, his cousin-german, succeeded him; and at his death Silo, who married his wife's sister, was preferred before the males of the blood royal. Alphonso, surnamed el Casto, was first violently dispossessed of the crown by a bastard of the royal family; but he being dead, the nobility and people, thinking Alphonso more fit to be a monk than a king, gave the crown to Bermudo called el Diacono; but Bermudo, several years after, resigning the kingdom, they conceived a better opinion of Alphonso, and made him king. Alphonso dying without issue, Don Ramiro, son to Bermudo, was preferred before the nephews of Alphonso. Don Ordonno, fourth from Ramiro, left four legitimate sons; but they being young, the estates laid them aside, and made his brother Fruela king. Fruela had many children; but the same estates gave the crown to Alphonso the Fourth, who was his nephew. Alphonso, turning monk, recommended his son Ordonno to the estates of the kingdom; but they refused him, and made his brother Ramiro king. Ordonno, third son to Ramiro, dying,

* Marian. l. xiii.

left a son called Bermudo; but the estates took his brother Sancho, and advanced him to the throne. Henry the First, being accidentally killed in his youth, left only two sisters, Blanche married to Lewis, son to Philip August king of France; and Berenguela married to Alphonso king of Leon. The estates made Ferdinand,* son of Berenguela the youngest sister, king, excluding Blanche, with her husband and children, for being strangers, and Berenguela herself, because they thought not fit that her husband should have any part in the government. Alphonso el Savio seems to have been a very good prince; but, applying himself more to the study of astrology than to affairs of government, his eldest son Ferdinand de la Cerda dying, and leaving his sons Alphonso and Ferdinand very young, the nobility, clergy, and people, deposed him, excluded his grandchildren, and gave the crown to Don Sancho his younger son, surnamed el Bravo, thinking him more fit to command them against the Moors, than an old astrologer, or a child. Alphonso and Sancho being dead, Alphonso el Desheredado laid claim to the crown; but it was given to Ferdinand the Fourth, and Alphonso, with his descendants the dukes de Medina Celi, remain excluded to this day. Peter, surnamed the Cruel, was twice driven out of the kingdom, and at last killed by Bertrand de Gueselin constable of France, or Henry count of Trastamara his bastard-brother, who was made king without any regard to the daughters of Peter, or to the house of la Cerda. Henry the Fourth left a daughter called Joan, whom

* Marian. l. xii. c. 7.

he declared his heir; but the estates gave the kingdom to Isabel his sister, and crowned her with Ferdinand of Arragon her husband * Joan, daughter to this Ferdinand and Isabel, falling mad, the estates committed the care of the government to her father Ferdinand, and after his death to Charles her son.

But the French have taught us, that when a king dies, his next heir is really king before he takes his oath, or be crowned. From them we learn, that "*le mort saisit le vif.*" And yet I know no history that proves more plainly than theirs, that there neither is nor can be in any, a right to the government of a people, which does not receive its being, manner, and measure, from the law of that country; which I hope to justify by four reasons.

1. When a king of Pharamond's race died, the kingdom was divided into as many parcels as he had sons; which could not have been, if one certain heir had been assigned by nature; for he ought to have had the whole: and if the kingdom might be divided, they who inhabited the several parcels, could not know to whom they owed obedience, till the division was made, unless he who was to be king of Paris, Metz, Soissons, or Orleans, had worn the name of his kingdom upon his forehead. But, in truth, if there might be a division, the doctrine is false, and there was no lord of the whole. This wound will not be healed by saying, The father appointed the division, and that by the law of nature

* Marian. l. xxiv.

every man may dispose of his own as he thinks fit; for we shall soon prove that the kingdom of France neither was, nor is, disposeable as a patrimony or chattel. Besides, if that act of kings had been grounded upon the law of nature, they might do the like at this day. But the law by which such divisions were made, having been abrogated by the assembly of estates in the time of Hugh Capet, and never practised since, it follows that they were grounded upon a temporary law, and not upon the law of nature, which is eternal.* If this were not so, the pretended certainty could not be: for no man could know to whom the last king had bequeathed the whole kingdom, or parcels of it, till the will were opened; and that must be done before such witnesses as may deserve credit in a matter of this importance and are able to judge whether the bequest be rightly made; for otherwise no man could know whether the kingdom was to have one lord or many, nor who he or they were to be; which intermission must necessarily subvert their polity, and this doctrine. But the truth is, the most monarchical men among them are so far from acknowledging any such right to be in the king, of alienating, bequeathing, or dividing the kingdom, that they do not allow him the right of making a will: and that of the last king Lewis the Thirteenth touching the regency during the minority of his son was of no effect.†

* Hist. de Fr. en la vie de Hugues Capet.

† Mem. du duc. de la Rochefocault.

2. This matter was made more clear under the second race. If a lord had been assigned to them by nature, he must have been of the royal family; but Pepin had no other title to the crown except the merits of his father, and his own, approved by the nobility and people who made him king. He had three sons, the eldest was made king of Italy, and, dying before him, left a son called Bernard, heir of that kingdom. The estates of France divided what remained between Charles the Great and Carloman.* The last of these dying in a few years, left many sons; but the nobility made Charles king of all France, and he dispossessed Bernard of the kingdom of Italy inherited from his father: so that he also was not king of the whole, before the expulsion of Bernard the son of his elder brother; nor of Aquitain, which by inheritance should have belonged to the children of his younger brother, any otherwise than by the will of the estates. Lewis the Debonair succeeded upon the same title, was deposed, and put into a monastery by his three sons Lothair, Pepin, and Lewis, whom he had by his first wife. But though these left many sons, the kingdom came to Charles the bald. The nobility and people disliking the eldest son of Charles, gave the kingdom to Lewis le Begue, who had a legitimate son called Charles le Simple; and two bastards, Lewis and Carloman, who were made kings. Carloman had a son called Lewis le Faineant; he was made king, but afterwards deposed for his vicious life. Charles le Gross suc-

* Paul Æmyl. Hist. Franc.

ceeded him, but for his ill government was also deposed; and Odo, who was a stranger to the royal blood, was made king. The same nobility that had made five kings since Lewis le Begue, now made Charles le Simple king, who, according to his name, was entrapped at Peronne by Ralph duke of Burgundy, and forced to resign his crown, leaving only a son called Lewis, who fled into England. Ralph being dead, they took Lewis surnamed Outremer, and placed him on the throne: he had two sons, Lothair and Charles. Lothair succeeded him, and died without issue. Charles had as fair a title as could be by birth, and the estates confessed it; but their ambassadors told him, that he having, by an unworthy life, rendered himself unworthy of the crown, they, whose principal care was to have a a good prince at the head of them, had chosen Hugh Capet; and the crown continues in his race to this day, though not altogether without interruption. Robert, son to Hugh Capet, succeeded him. He left two sons, Robert and Henry; but Henry, the younger son, appearing to the estates of the kingdom to be more fit to reign than his elder brother, they made him king: Robert, and his descendants, continuing dukes of Burgundy only for about ten generations, at which time his issue male failing, that duchy returned to the crown during the life of king John, who gave it to his second son Philip for an appenage still depending upon the crown. The same province of Burgundy was, by the treaty of Madrid, granted to the emperor Charles the Fifth, by Francis the first: but the people refused to be alienated, and

the estates of the kingdom approved their refusal. By the same authority Charles the Sixth was removed from the government, when he appeared to be mad; and other examples of a like nature may be alledged. From which we may safely conclude, that if the death of one king do really invest the next heir with the right and power, or that he who is so invested, be subject to no law but his own will, all matters relating to that kingdom must have been horribly confused during the reigns of twenty-two kings of Pharamond's race; they can have had no rightful king from the death of Chilperic to king John: and the succession since that time is very liable to be questioned, if not utterly overthrown by the house of Austria and others, who, by the counts of Hapsburg, derive their descent from Pharamond, and by the house of Lorrain claiming from Charles, who was excluded by Capet; all which is most absurd, and they who pretend it, bring as much confusion into their own laws, and upon the polity of their own nation, as shame and guilt upon the memory of their ancestors, who, by the most extreme injustice, have rejected their natural lord, or dispossessed those who had been in the most solemn manner placed in the government, and to whom they had generally sworn allegiance.

3. If the next heir be actually king, seized of the power by the death of his predecessor, so that there is no intermission; then all the solemnities, and religious ceremonies, used at the coronations of their kings, with the oaths given and taken, are the most

profane abuses of sacred things, in contempt of God and man, that can be imagined, most especially if the act be (as our author calls it) voluntary, and the king, receiving nothing by it, be bound to keep it no longer than he pleases. The prince who is to be sworn, might spare the pains of watching all night in the church, fasting, praying, confessing, communicating, and swearing, "that he will, to the utmost of his power, defend the clergy, maintain the union of the church, obviate all excess, rapine, extortion, and iniquity; take care, that in all judgments justice may be observed, with equity and mercy, &c. or of invoking the assistance of the Holy Ghost for the better performance of his oath;" and without ceremony tell the nobility and people, that he would do what he thought fit. It were to as little purpose for the archbishop of Rheims to take the trouble of saying mass, delivering to him the crown, sceptre, and other ensigns of royalty, explaining what is signified by them, anointing him with the oil which they say was delivered by an angel to St. Rimigius, blessing him, and praying to God to bless him, if he rightly performed his oath to God and the people, and denouncing the contrary in case of failure on his part, if these things conferred nothing upon him but what he had before, and were of no obligation to him. Such ludifications of the most sacred things are too odious and impious to be imputed to nations that have any virtue, or profess christianity. This cannot fall upon the French and Spaniards, who had certainly a great zeal to religion, whatever it was; and were so eminent for moral virtues, as to be a

reproach to us, who live in an age of more knowledge. But their meaning is so well declared by their most solemn acts, that none but those who are wilfully ignorant can mistake. One of the councils held at Toledo declared by the clergy, nobility, and others assisting, "that no man should be placed in the royal seat till he had sworn to preserve the church,"* &c. Another held in the same place signified Sisindus, who was then newly crowned,† that if he, or any of his successors, should, contrary to their oaths, and the laws of their country, proudly and cruelly presume to exercise domination over them, he should be excommunicated, and separated from Christ and them to eternal judgment." The French laws, and their best writers, asserting the same things, are confirmed by perpetual practice. Henry of Navarre, though certainly, according to their rules, and in their esteem, a most accomplished prince, was by two general assemblies of the estates‡ held at Blois, deprived of the succession for being a protestant; and notwithstanding the greatness of his reputation, valour, victories, and affability, could never be admitted till he had made himself capable of the ceremonies of his coronation, by conforming to the religion which by the oath he was to defend. Nay, this present king, though haughty enough by nature, and elevated by many successes, has acknowledged, as he says, with joy, that he can do nothing contrary to law, and calls it a happy impotence; in pursuance of which, he has annulled many acts of

* Concil. Tolet 6. † Concil. Tolet 4. ‡ Hist. Thuan.

his father and grandfather, alienating the demesnes of the crowns, as things contrary to law, and not within their power.

These things being confirmed by all the good authors of that nation, Filmer finds only the worst to be fit for his turn; and neither minding law nor history, takes his maxims from a vile, flattering discourse of Bellay,* calculated for the personal interest of Henry the Fourth then king of Navarre, in which he says, "That the heir apparent, though furious, mad, a fool, vicious, and in all respects abominably wicked, must be admitted to the crown." But Bellay was so far from attaining the ends designed by his book, that by such doctrines, which filled all men with horror, he brought great prejudice to his master, and procured little favour from Henry, who desired rather to recommend himself to his people, as the best man they could set up, than to impose a necessity upon them of taking him, if he had been the worst. But our author, not contented with what this sycophant says, in relation to such princes as are placed in the government by a law establishing the succession by inheritance, with an impudence peculiar to himself, asserts the same right to be in any man, who by any means gets into power; and imposes the same necessity of obedience upon the subject where there is no law, as Bellay does by virtue of one that is established.

4. In the last place. As Bellay acknowledges, that the right belongs to princes only, where it is

* Apol. Cathol.

estabiished by law; I deny that there is, was, or ever can be, any such. No people are known to have been so mad or wicked as by their own consent, for their own good, and for the obtaining of justice, to give the power to beasts, under whom it could never be obtained: or if we could believe, that any have been guilty of an act so full of folly, turpitude, and wickedness, it could not have the force of a law, and could never be put in execution; for though the rules, by which the proximity should be judged, be never so precise, it will still be doubted whose case suits best with them. Though the law in some places gives private inheritances to the next heir, and in others makes allotments according to several proportions, no one knows to whom, or how far, the benefit shall accrue to any man, till it be adjudged by a power to which the parties must submit. Contests will in the like manner arise concerning successions to crowns, how exactly soever they be disposed by law: for though every one will say, that the next ought to succeed, yet no man knows who is the next; which is too much verified by the bloody decisions of such disputes in many parts of the world: and he that says, the next in blood is actually king, makes all questions thereupon arising impossible to be otherwise determined than by the sword; the pretender to the right being placed above the judgment of man, and the subjects (for any thing I know) obliged to believe, serve, and obey him, if he says he has it. For otherwise, if either every man in particular, or altogether, have a right of judging his title, it can be of no value till it be adjudged.

I confess, that the law of France, by the utter exclusion of females and their descendants, does obviate many dangerous and inextricable difficulties; but others remain, which are sufficient to subvert all the policy of that kingdom, if there be not a power of judging them; and there can be none if it be true "*le mort saisit le vif.*" Not to trouble myself with feigned cases, that of legitimation alone will suffice. It is not enough to say, that the children born under marriage are to be reputed legitimate; for not only several children born of Joan, daughter to the king of Portugal, wife to Henry the Fourth of Castile, during the time of their marriage, were utterly rejected, as begotten in adultery, but also her daughter Joan, whom the king during his life, and at the hour of his death, acknowledged to have been begotten by him; and the only title that Isabel, who was married to Ferdinand of Arragon, had to the crown of Spain, was derived from their rejection. It would be tedious, and might give offence to many great persons, if I should relate all the dubious cases that have been, or still remain in the world, touching matters of this nature: but the lawyers of all nations will testify, that hardly any one point comes before them, which affords a greater number of difficult cases, than that of marriages, and the legitimation of children upon them; and nations must be involved in the most inextricable difficulties, if there be not a power somewhere to decide them; which cannot be, if there be no intermission, and that the next in blood (that is, he who says he is the next) be immediately invested with

the right and power. But, surely, no people has been so careless of their most important concernments, as to leave them in such uncertainty, and simply to depend upon the humour of a man, or the faith of a woman, who, besides their other frailties, have been often accused of suppositious birth: and men's passions are known to be so violent in relation to women they love or hate, that none can safely be trusted with those judgments. The virtue of the best would be exposed to a temptation, that flesh and blood can hardly resist; and such as are less perfect would follow no other rule than the blind impulse of the passion, that for the present reigns in them. There must therefore be a judge of such disputes as may in these cases arise in every kingdom; and though it is not my business to determine who is that judge in all places, yet I may justly say, that in England it is the Parliament. If no inferior authority could debar Ignotus, son to the lady Rosse, born under the protection, from the inheritance of a private family, none can certainly assume a power of disposing of the crown upon any occasion. No authority, but that of the Parliament, could legitimate the children of Catharine Swinford, with a proviso not to extend to the inheritance of the crown. Others might say, if they were lawfully begotten, they ought to inherit every thing; and nothing, if they were not: but the Parliament knew how to limit a particular favour, and prevent it from extending to a public mischief. Henry the Eighth took an expeditious way of obviating part of the controversies that might arise from the multitude of

his wives, by cutting off the heads of some, as soon as he was weary of them, or had a mind to take another; but having been hindered from dealing in the same manner with Catharine, by the greatness of her birth and kindred, he left such as the Parliament only could resolve. And no less power would ever have thought of making Mary and Elizabeth capable of the succession, when, according to ordinary rules, one of them must have been a bastard; and it had been absurd to say, that both of them were, immediately upon the death of their predecessors, possessed of the crown, if an act of Parliament had not conferred the right upon them, which they could not have by birth. But the kings and princes of England have not been of a temper different from those of other nations: and many examples may be brought of the like occasions of dispute happening every where; and the like will probably be forever; which must necessarily introduce the most mischievous confusions, and expose the titles, which (as is pretended) are to be esteemed the most sacred, to be overthrown by violence and fraud, if there be not in all places a power of deciding the controversies that arise from the uncertainty of titles, according to the respective laws of every nation, upon which they are grounded: no man can be thought to have a just title, till it be so adjudged by that power: this judgment is the first step to the throne: the oath taken by the king obliges him to observe the laws of his country; and that concerning the succession being one of the principal, he is obliged to keep that part as well as any other.

SECTION XIX.

THE GREATEST ENEMY OF A JUST MAGISTRATE IS HE WHO ENDEAVOURS TO INVALIDATE THE CONTRACT BETWEEN HIM AND THE PEOPLE, OR TO CORRUPT THEIR MANNERS.

It is not only from religion, but from the law of nature that we learn the necessity of standing to the agreements we make; and he who departs from the principle written in the hearts of men, "*pactis standum*," seems to degenerate into a beast. Such as had virtue, though without true religion, could tell us (as a brave and excellent Grecian did) that it was not necessary for him to live, but it was necessary to preserve his heart from deceit, and his tongue from falsehood. The Roman satirist carries the same notion to a great height, and affirms, that* "though the worst of tyrants should command a man to be false and perjured, and back his injunction with the utmost of torments, he ought to prefer his integrity before his life." And though Filmer may be excused if he often mistakes in matters of theology, yet his inclinations to Rome, which he prefers before Geneva, might have led him to the principles in which the

* ..... Phalaris licet imperet, ut sis
Falsus, & admoto dictet perjuria tauro,
Summum crede nefas animam præferre pudori....JUVENAL.

honest Romans lived, if he had not observed, that such principles as make men honest and generous, do also make them lovers of liberty, and constant in the defence of their country; which savouring too much of a republican spirit, he prefers the morals of that city, since they are become more refined by the pious and charitable Jesuits, before those that were remarkable in them, as long as they retained any shadow of their ancient integrity, which admitted of no equivocations, and detested prevarications; by that means preserving innocence in the hearts of private men, for their inward contentment, and in civil societies, for the public good; which, if once extinguished, mankind must necessarily fall into the condition Hobbes rightly calls "*bellum omnium contra omnes*," wherein no man can promise to himself any other wife, children, or goods, than he can procure by his own sword.

Some may perhaps think that the endeavours of our author to introduce such accursed principles as tend to the ruin of mankind, proceed from his ignorance. But though he appears to have had a great measure of that quality, I fear the evil proceeds from a deeper root: and that he attempts to promote the interests of ill magistrates, who make it their business to destroy all good principles in the people, with as much industry as the good endeavour to preserve them where they are, and teach them where they are wanting. Reason and experience instruct us, that every man acts according to the end he proposes to himself. The good magistrate seeks the good of the

people committed to his care, that he may perform the end of his institution: and knowing that chiefly to consist in justice and virtue, he endeavours to plant and propagate them; and by doing this he procures his own good as well as that of the public. He knows there is no safety where there is no strength, no strength without union, no union without justice; no justice where faith and truth, in accomplishing public and private contracts, are wanting. This he perpetually inculcates, and thinks it a great part of his duty, by precept and example, to educate youth in a love of virtue and truth, that they may be seasoned with them, and filled with an abhorrence of vice and falsehood, before they attain that age which is exposed to the most violent temptations, and in which they may, by their crimes, bring the greatest mischiefs upon the public. He would do all this, though it were to his own prejudice. But as good actions always carry a reward with them, these contribute in a high measure to his advantage. By preferring the interest of the people before his own, he gains their affection, and all that is in their power comes with it; whilst he unites them to one another, he unites all to himself; in leading them to virtue, he increases their strength, and by that means provides for his own safety, glory, and power.

On the other side, such as seek different ends must take different ways. When a magistrate fancies that he is not made for the people, but the people for him; that he does not govern for them, but for himself;

and that the people live only to increase his glory, or furnish matter for his pleasures; he does not inquire what he may do for them, but what he may draw from them. By this means he sets up an interest of profit, pleasure, or pomp, in himself, repugnant to the good of the public, for which he is made to be what he is. These contrary ends certainly divide the nation into parties; and whilst every one endeavours to advance that to which he is addicted, occasions of hatred for injuries every day done, or thought to be done, and received, must necessarily arise. This creates a most fierce and irreconcileable enmity, because the occasions are frequent, important, and universal, and the causes thought to be most just. The people think it the greatest of all crimes, to convert that power to their hurt, which was instituted for their good; and that the injustice is aggravated by perjury and ingratitude, which comprehend all manner of ill; and the magistrates give the name of sedition or rebellion to whatsoever they do for the preservation of themselves, and their own rights. When men's spirits are thus prepared, a small matter sets them on fire; but if no accident happen to blow them into a flame, the course of justice is certainly interrupted, the public affairs are neglected; and when any occasion, whether foreign or domestic, arises, in which the magistrate stands in need of the people's assistance, they, whose affections are alienated, not only shew an unwillingness to serve him with their persons and estates, but fear that by delivering him from his distress, they strengthen their enemy, and enable him to oppress them: and

he fancying his will to be unjustly opposed or his due more unjustly denied, is filled with a dislike of what he sees, and a fear of worse for the future. Whilst he endeavours to ease himself of the one, and to provide against the other, he usually increases the evils of both, and jealousies are on both sides multiplied. Every man knows, that the governed are, in a great measure, under the power of the governor; but as no man, or number of men, is willingly subject to those who seek their ruin, such as fall into so great a misfortune, continue no longer under it than force, fear, or necessity, may be able to oblige them. But as such a necessity can hardly lie longer upon a great people, than till the evil be fully discovered and comprehended, and their virtue, strength, and power, be united to expel it; the evil magistrate looks upon all things, that may conduce to that end, as so many preparatives to his ruin; and, by the help of those who are of his party, will endeavour to prevent that union, and diminish that strength, virtue, power, and courage, which he knows to be bent against him. And as truth, faithful dealing, due performance of contracts, and integrity of manners, are bonds of union, and helps to good, he will always by tricks, artifices, cavils, and all means possible, endeavour to establish falsehood and dishonesty; whilst other emissaries and instruments of iniquity, by corrupting the youth, and seducing such as can be brought to lewdness and debauchery, bring the people to such a pass, that they may neither care nor dare to vindicate their rights, and that those who would do it, may so far suspect

each other, as not to confer upon, much less to join in, any action tending to the public deliverance.

This distinguishes the good from the bad magistrate, the faithful from the unfaithful; and those who adhere to either, living in the same principle, must walk in the same ways. They who uphold the rightful power of a just magistracy, encourage virtue and justice; teach men what they ought to do, suffer, or expect from others; fix them upon principles of honesty; and generally advance every thing that tends to the increase of the valour, strength, greatness, and happiness of the nation, creating a good union among them, and bringing every man to an exact understanding of his own and the public rights. On the other side, he that would introduce an ill magistrate, make one evil who was good, or preserve him in the exercise of injustice when he is corrupted, must always open the way for him by vitiating the people, corrupting their manners, destroying the validity of oaths and contracts, teaching such evasions, equivocations, and frauds, as are inconsistent with the thoughts that become men of virtue and courage; and overthrowing the confidence they ought to have in each other, make it impossible for them to unite among themselves. The like arts must be used with the magistrate: he cannot be for their turn till he is persuaded to believe he has no dependence upon, and owes no duty to, the people; that he is of himself, and not by their institution; that no man ought to inquire into, nor be

judge of his actions; that all obedience is due to him, whether he be good or bad, wise or foolish, a father or an enemy to his country. This being calculated for his personal interest, he must pursue the same designs, or his kingdom is divided within itself and cannot subsist. By this means those who flatter his humour, come to be accounted his friends, and the only men that are thought worthy of great trusts, whilst such as are of another mind are exposed to all persecution. These are always such as excel in virtue, wisdom, and greatness of spirit: they have eyes, and will always see the way they go; and leaving fools to be guided by implicit faith, will distinguish between good and evil, and chuse that which is best: they will judge of men by their actions, and by them discovering whose servant every man is, know whether he is to be obeyed or not. Those who are ignorant of all good, careless, or enemies to it, take a more compendious way; their slavish, vicious, and base natures, inclining them to seek only private and present advantages, they easily slide into a blind dependence upon one, who has wealth and power; and desiring only to know his will, care not what injustice they do, if they may be rewarded. They worship what they find in the temple, though it be the vilest of idols; and always like that best which is worst, because it agrees with their inclinations and principles. When a party comes to be erected upon such a foundation, debauchery, lewdness, and dishonesty, are the true badges of it. Such as wear them are cherished; but the principle marks of favour are reserved for those, who are the

most industrious in mischief, either by seducing the people with the allurements of sensual pleasures, or corrupting their understandings by false and slavish doctrines. By this means a man who calls himself a philosopher, or a divine, is often more useful than a great number of tapsters, cooks, buffoons, players, fiddlers, whores, or bawds. These are the devil's ministers of a lower order; they seduce single persons; and such as fall into their snares, are, for the most part, men of the simpler sort; but the principal supporters of his kingdom are they, who, by false doctrines, poison the springs of religion and virtue, and by preaching or writing (if their falsehood and wickedness were not detected) would extinguish all principles of common honesty, and bring whole nations to be best satisfied with themselves, when their actions are most abominable. And as the means must always be suitable to the end proposed, the governments that are to be established or supported by such ways, must needs be the worst of all, and comprehend all manner of evil.

SECTION XX.

UNJUST COMMANDS ARE NOT TO BE OBEYED; AND NO MAN IS OBLIGED TO SUFFER FOR NOT OBEYING SUCH AS ARE AGAINST LAW.

In the next place our author gravely proposes a question, "Whether it be a sin to disobey the king,

if he command any thing contrary to law?" and as gravely determines, "that not only in human laws, but even in divine, a thing may be commanded contrary to law, and yet obedience to such a command is necessary. The sanctifying of the sabbath is a divine law, yet if a master command his servant not to go to church upon a sabbath-day, the best divines teach us, the servant must obey, &c. It is not fit to tie the master to acquaint the servant with his secret counsel." Though he frequently contradicts in one line what he says in another, this whole clause is uniform, and suitable to the main design of his book. He sets up the authority of man in opposition to the command of God, gives it the preference, and says, the best divines instruct us so to do. St. Paul then must have been one of the worst, for he knew, that the powers under which he lived, had, under the severest penalties, forbidden the publication of the gospel; and yet he says, "Woe to me if I preach it not." St. Peter was no better than he, for he tells us, "That it is better to obey God than man:" and they could not speak otherwise, unless they had forgotten the words of their Master, who told them, they should not fear them, that could only kill the body, but him who could kill, and cast into hell." And if I must not fear him, that can only kill the body, not only the reason, but all excuse for obeying him, is taken away.

To prove what he says, he cites a pertinent example from St. Luke,* and very logically concludes,

* Chap. xiv.

that because Christ reproved the hypocrisy of the Pharisees (who generally adhered to the external and circumstantial part of the law, neglecting the essential, and taking upon themselves to be the interpreters of that which they did not understand) the law of God is not to be obeyed; and as strongly proves, that because Christ shewed them, that the same law, which, by their own confession, permitted them to pull an ass out of a pit on the sabbath-day, could not but give a liberty of healing the sick, therefore the commands of kings are to be obeyed, though they should be contrary to human and divine laws. But if perverseness had not blinded him, he might have seen, that this very text is wholly against his purpose; for the magistratical power was on the side of the Pharisees, otherwise they would not have sought an occasion to ensure him; and that power having perverted the law of God by false glosses, and a superinduction of human traditions, prohibited the most necessary acts of charity to be done on the sabbath-day, which Christ reproved, and restored the sick man to his health in their sight.

But I could wish our author had told us the names of those divines, who, he says, are the best, and who pretend to teach us these fine things. I know some who are thought good, that are of a contrary opinion, and say, that God having required that day to be set apart for his service and worship, man cannot dispense with the obligation, unless he can abrogate the law of God. Perhaps for want of other arguments to prove the contrary, I may be told, that this savours

too much of puritanism and calvanism. But I shall take the reproach, till some better patrons than Laud, and his creatures, may be found for the other opinion. By the advice and instigation of these men, from about the year 1630, to 1640, sports and revelings, which ended, for the most part, in drunkenness and lewdness, were not only permitted on that day, but injoined. And though this did advance human authority in derogation to the divine, to a degree that may please such as are of our author's mind; yet others, resolving rather to obey the laws of God than the commands of men, could not be brought to pass the Lord's day in that manner. Since that time no man, except Filmer and Heylin, has been so wicked as to conceive, or so impudent as to assert such brutal absurdities. But leaving the farther consideration of the original of this abuse, I desire to know, whether the authority given to masters to command things contrary to the law of God, be peculiar in relation to the sabbath, or to a few other points, or ought generally to extend to all God's laws; and whether he who may command his servant to act contrary to the law of God, has not a right in himself of doing the same. If peculiar, some authority or precept must be produced, by which it may appear, that God has slighted his ordinance concerning that day and suffered it to be contemned, whilst he exacts obedience to others. If we have a liberty left to us of slighting others also, more or less in number, we ought to know how many, what they are, and how it comes to pass, that some are of obligation, and others not. If the empire of the world is not only divided

between God and Cæsar, but every man also who can give five pounds a year to his servant, has so great a part in it, that, in some cases, his commands are to be obeyed preferably to those of God, it were fit to know the limits of each kingdom, lest we happen preposterously to obey man, when we ought to obey God, or God, when we are to follow the commands of men. If it be general, the law of God is of no effect, and we may safely put an end to all thoughts and discourses of religion: the word of God is nothing to us: we are not to inquire what he has commanded, but what pleases our master, how insolent, foolish, vile, or wicked soever he may be. The apostles and prophets, who died for preferring the commands of God before those of men, fell like fools, and perished in their sins. But if every particular man that has a servant, can exempt him from the commands of God, he may also exempt himself, and the laws of God are at once abrogated throughout the world.

It is a folly to say there is a passive, as well as an active obedience, and that he who will not do what his master commands, ought to suffer the punishment he inflicts: for if the master has a right of commanding, there is a duty incumbent on the servant of obeying. He that suffers for not doing that which he ought to do, draws upon himself both the guilt and the punishment. But no one can be obliged to suffer for that which he ought not to do, because he who pretends to command, has not so far an authority. However, our question is, whether the servant should

forbear to do that which God commands, rather than whether the master should put away or beat him, if he do not; for if the servant ought to obey his master rather than God, as our author says the best divines assert, he sins in disobeying, and that guilt cannot be expiated by his suffering. If it be thought I carry this point to an undue extremity, the limits ought to be demonstrated, by which it may appear that I exceed them, though the nature of the case cannot be altered: for if the law of God may not be abrogated by the commands of men, a servant cannot be exempted from keeping the sabbath according to the ordinance of God, at the will of his master. But if a power be given to man at his pleasure to annul the laws of God, the apostles ought not to have preached, when they were forbidden by the powers to which they were subject; the tortures and deaths they suffered for not obeying that command were in their own wrong, and their blood was upon their own heads.

His second instance concerning wars, in which he says the subject is not to examine whether they are just or unjust, but must obey, is weak and frivolous, and very often false; whereas, consequences can rightly be drawn from such things only as are certainly and universally true. Though God may be merciful to a soldier, who, by the wickedness of a magistrate, whom he honestly trusts, is made a minister of injustice, it is nothing to this case. For, if our author says true, that the word of a king can justify him in going against the command of God,

he must do what is commanded, though he thinks it evil: the christian soldiers under the Pagan emperors were obliged to destroy their brethren, and the best men in the world, for being so: such as now live under the Turk have the same obligation upon them of defending their master, and slaughtering those he reputes his enemies for adhering to christianity: and the king of France may, when he pleases, arm one part of his protestant subjects to the destruction of the other; which is a godly doctrine, and worthy our author's invention.

But, if this be so, I know not how the Israelites can be said to have sinned in following the examples of Jeroboam, Omri, Ahab, or other wicked kings: they could not have sinned in obeying, if it had been a sin to disobey their commands; and God would not have punished them so severely, if they had not sinned. It is impertinent to say they were obliged to serve their kings in unjust wars, but not to serve idols; for though God be jealous of his glory, yet he forbids rapine and murder as well as idolatry. If there be a law that forbids the subject to examine the commands tending to the one, it cannot but enjoin obedience to the other. The same authority which justifies murder, takes away the guilt of idolatry; and the wretches, both judges and witnesses, who put Naboth to death, could as little alledge ignorance, as those that worshipped Jeroboam's calves; the same light of nature by which they should have known, that a ridiculous image

was not to be adored as God, instructing them also, that an innocent man ought not, under pretence of law, to be murdered by perjury.

SECTION XXI.

IT CANNOT BE FOR THE GOOD OF THE PEOPLE, THAT THE MAGISTRATE HAVE A POWER ABOVE THE LAW: AND HE IS NOT A MAGISTRATE, WHO HAS NOT HIS POWER BY LAW.

THAT we may not be displeased, or think it dangerous and slavish to depend upon the will of a man, which perhaps may be irregular or extravagant in one who is subject to no law, our author very dexterously removes the scruples by telling us,

1. "That the prerogative of the king to be above the law, is only for the good of them that are under the law, and to preserve their liberties.

2. "That there can be no laws without a supreme power to command or make them: in aristocracies the noblemen are above the law: in democracies the people: by the like reason, in a monarchy, the king must of necessity be above the law. There can be no sovereign majesty in him that is under the law:

that which gives the very being to a king, is the power to give laws. Without this power he is but an equivocal king. It matters not how he comes by this power, whether by election, donation, succession, or any other means." I am contented in some degree to follow our author, and to acknowledge, that the king neither has, nor can have, any prerogative which is not for the good of the people, and the preservation of their liberties. This, therefore, is the foundation of magistratical power, and the only way of discerning whether the prerogative of making laws, of being above laws, or any other he may pretend, be justly due to him or not: and if it be doubted who is the fittest judge to determine that question, common sense will inform us, that if the magistrate receive his power by election or donation, they who elect, or give him that power, best know whether the good they sought be performed or not; if by succession, they who instituted the succession; if otherwise, that is, by fraud or violence, the point is decided; for he has no right at all, and none can be created by those means. This might be said, though all the princes were of ripe age, sober, wise, just, and good; for even the best are subject to mistakes and passions, and therefore unfit to be judges of their own concernments, in which they may, by various means, be misguided: but it would be extreme madness to attribute the same to children, fools, or madmen, who are not able to judge of the least things concerning themselves or others; but most especially to those who, coming in by usurpation, declare their contempt of all human and

divine laws, and are enemies to the people they oppress. None, therefore, can be judges of such cases but the people, for whom and by whom the constitutions are made; or their representatives and delegates, to whom they give the power of doing it.

But nothing can be more absurd than to say, that one man has an absolute power above law to govern according to his own will, "for the people's good, and the preservation of their liberty:" for no liberty can subsist where there is such a power; and we have no other way of distinguishing between free nations, and such as are not so, than that the free are governed by their own laws and magistrates, according to their own mind, and that the others either have willingly subjected themselves, or are by force brought under the power of one or more men, to be ruled according to his or their pleasure. The same distinction holds in relation to particular persons. He is a free man who lives as best pleases himself, under laws made by his own consent; and the name of slave can belong to no man, unless to him who is either born in the house of a master, bought, taken, subdued, or willingly gives his ear to be nailed to the post, and subjects himself to the will of another. Thus were the Grecians said to be free, in opposition to the Medes and Persians, as Artabanus acknowledged in his discourse to Themistocles.* In the same manner the Italians, Germans, and Spaniards, were distinguished from the eastern nations, who,

* Plut. vit. Themist.

for the most part, were under the power of tyrants. Rome was said to have recovered liberty by the expulsion of the Tarquins; or as Tacitus expresses it, "* Lucius Brutus established liberty and the consulate together," as if before that time they had never enjoyed any; and Julius Cæsar is said to have overthrown the liberty of that people. But if Filmer deserves credit, the Romans were free under Tarquin, enslaved when he was driven away, and his prerogative extinguished, that was so necessarily required for the defence of their liberty; and were never restored to it, till Cæsar assumed all the power to himself. By the same rule the Switzers, Grisons, Venetians, Hollanders, and some other nations, are now slaves; and Tuscany, the kingdom of Naples, the ecclesiastical state, with such as live under a more gentle master on the other side of the water, I mean the Turk, are free nations. Nay, the Florentines, who complain of slavery under the house of Medices, were made free by the power of a Spanish army, who set up a prerogative in that gentle family, which, for their good, have destroyed all that could justly be called so in that country and almost wholly dispeopled it. I, who esteem myself free, because I depend upon the will of no man, and hope to die in the liberty I inherit from my ancestors, am a slave; and the Moors or Turks, who may be beaten and killed whenever it pleases their insolent masters, are free men. But surely the world is not so much mistaken in the signification of words and things.

* Libertatem & consulatum L. Brutus instituit. AN. l. i.

The weight of chains, number of stripes, hardness of labour, and other effects of a master's cruelty, may make one servitude more miserable than another; but he is a slave who serves the best and gentlest man in the world, as well as he who serves the worst: and he does serve him, if he must obey his commands, and depends upon his will. For this reason the poet ingeniously flattering a good emperor, said, that liberty was not more desirable, than to serve a gentle master: but still acknowledged that it was a service, distinct from, and contrary to, liberty: and it had not been a handsome compliment, unless the evil of servitude were so extreme, that nothing but the virtue and goodness of the master could any way compensate or alleviate it. Now, though it should be granted, that he had spoken more like to a philosopher than a poet; that we might take his words in the strictest sense, and think it possible to find such conveniencies in a subjection to the will of a good and wise master, as may balance the loss of liberty, it would be nothing to the question; because liberty is thereby acknowledged to be destroyed by the prerogative, which is only instituted to preserve it. If it were true that no liberty were to be preferred before the service of a good master, it could be of no use to the perishing world, which Filmer, and his disciples, would, by such arguments, bring into a subjection to children, fools mad, or vicious men. These are not cases feigned upon a distant, imaginary possibility, but so frequently found amongst men, that there are few examples of the contrary. And as it is folly to suppose, that princes will

always be wise, just, and good, when we know, that few have been able alone to bear the weight of a government, or to resist the temptations to ill, that accompany an unlimited power, it would be madness to presume, they will for the future be free from infirmities and vices. And if they be not, the nations under them will not be in such a condition of servitude to a good master as the poet compares to liberty, but in a miserable and shameful subjection to the will of those who know not how to govern themselves, or to do good to others: though Moses, Joshua, and Samuel, had been able to bear the weight of an unrestrained power; though David and Solomon had never abused that which they had: what effect could this have upon a general proposition? Where are the families that always produce such as they were? When did God promise to assist all those who should attain to the sovereign power, as he did them whom he chose for the works he designed? Or what testimony can Filmer give us, that he has been present with all those who have hitherto reigned in the world? But if we know, that no such thing neither is, nor has been; and can find no promise to assure us, nor reason to hope, that it ever will be, it is as foolish to found the hopes of preserving a people upon that which never was, or is so likely to fail, nay, rather which in a short time most certainly will fail, as to root up vines and fig-trees, in expectation of gathering grapes and figs from thistles and briars. This would be no less than to extinguish the light of common sense, to neglect the means that God has given us to provide for our security, and to

impute to him a disposition of things utterly inconsistent with his wisdom and goodness. If he has not therefore ordered, that thorns and thistles should produce figs and grapes, nor that the most important works in the world, which are not without the utmost difficulty, if at all, to be performed by the best and wisest of men, should be put into the hands of the weakest, most foolish, and worst, he cannot have ordained, that such men, women, or children, as happen to be born in reigning families, or get the power into their hands, by fraud, treachery, or murder (as very many have done) should have a right of disposing all things according to their will. And if men cannot be guilty of so great an absurdity as to trust the weakest and worst with a power which usually subverts the wisdom and virtue of the best; or to expect such effects of virtue and wisdom from those who come by chance, as can hardly, if at all, be hoped from the most excellent, our author's proposition can neither be grounded upon the ordinance of God, nor the institution of man. Nay, if any such thing had been established by our first parents in their simplicity, the utter impossibility of attaining what they expected from it, must wholly have abrogated the establishment: or rather, it had been void from the beginning, because it was not * "a just sanction, commanding things good, and forbidding the contrary," but a foolish and perverse sanction, setting up the unruly appetite of one person to the subversion of all that is good in the world, by making the wisdom of

* Sanctio recta, jubens honesta, prohibens contraria....CICER.

the aged and experienced to depend upon the will of women, children, and fools; by sending the strong and brave to seek protection from the most weak and cowardly, and subjecting the most virtuous and best of men to be destroyed by the most wicked and vicious. These being the effects of that unlimited prerogative, which, our author says, was only instituted for the good and defence of the people, it must necessarily fall to the ground, unless slavery, misery, infamy, destruction, and desolation, tend to the preservation of liberty, and are to be preferred before strength, glory, plenty, security, and happiness. The state of the Roman empire after the usurpation of Cæsar, will set this matter in the clearest light; but having done it already in the former parts of this work, I content myself to refer to those places. And though the calamities they suffered were a little allayed and moderated by the virtues of Antoninus and M. Aurelius, with one or two more, yet "we have no example" of the continuance of them in a family, nor "of any nation, great or small, that has been under an absolute power, which does not too plainly manifest, that no man, or succession of men, is to be trusted with it."

But, says our author, "there can be no law where there is not a supreme power;" and from thence very strongly concludes it must be in the king; for "otherwise there can be no sovereign majesty in him, and he is but an equivocal king." This might have been of some force, if governments were established,

and laws made, only to advance that sovereign majesty; but nothing at all to the purpose, if (as he confesses) the power which the prince has, be given for the good of the people, and for the defence of every private man's life, liberty, land, and goods; for that which is instituted cannot be abrogated for want of that which was never intended in the institution. If the public safety be provided, liberty and propriety secured, justice administered, virtue encouraged, vice suppressed, and the true interest of the nation advanced, the ends of government are accomplished; and the highest must be contented with such a proportion of glory and majesty as is consistent with the public; since the magistracy is not instituted, nor any person placed in it, for the increase of his majesty, but for the preservation of the whole people, and the defence of the liberty, life, and estate, of every private man, as our author himself is forced to acknowledge.

But what is this sovereign majesty, so inseparable from royalty, that one cannot subsist without the other? Caligula placed it in a power of* doing what he pleased to all men; Nimrod, Nabuchodonosor, and others, with an impious and barbarous insolence, boasted of the greatness of their power. They thought it a glorious privilege to kill or spare whom they pleased. But such kings, as by God's permission might have been set up over his people, were to have nothing of this.† They were not to multiply

* Omnia mihi in omnes licere. SUETON.

† Deut. xvii.

gold, silver, wives, or horses; they were not to govern by their own will, but according to the law: from which they might not recede, nor raise their hearts above their brethren. Here were kings without that unlimited power, which makes up the sovereign majesty, that Filmer affirms to be so essential to kings, that without it they are only equivocal; which proving nothing but the incurable perverseness of his judgment, the malice of his heart, or malignity of his fate, always to oppose reason and truth, we are to esteem those to be kings who are described to be so by the scriptures, and to give another name to those who endeavour to advance their own glory, contrary to the precept of God, and the interest of mankind.

But, unless the light of reason had been extinguished in him, he might have seen, that though no law could be made without a supreme power, that supremacy may be in a body consisting of many men, and several orders of men. If it be true, which perhaps may be doubted, that there have been in the world simple monarchies, aristocracies, or democracies, legally established, it is certain, that the most part of the governments of the world (and I think all that are or have been good) were mixed. Part of the power has been conferred upon the king, or the magistrate that represented him, and part upon the senate and people, as has been proved in relation to the governments of the Hebrews, Spartans, Romans, Venetians, Germans, and all those who live under that which is usually called the Gothic polity. If the

single person participating of this divided power dislikes either the name he bears, or the authority he has, he may renounce it; but no reason can be from thence drawn to the prejudice of nations, who give so much as they think consistent with their own good, and reserve the rest to themselves, or to such other officers as they please to establish.

No man will deny, that several nations have had a right of giving power to consuls, dictators, archons, suffetes, dukes, and other magistrates, in such proportions as seemed most conducive to their own good; and there must be a right in every nation of allotting to kings so much as they please, as well as to the others, unless there be a charm in the word king, or in the letters that compose it. But this cannot be; for there is no similitude between "king," "*rex*," and "*basileus*:" they must therefore have a right of regulating the power of kings, as well as that of consuls or dictators; and it had not been more ridiculous in Fabius, Scipio, Camillus, or Cincinnatus, to assert an absolute power in himself under pretence of advancing his sovereign majesty against the law, than for any king to do the like. But as all nations give what form they please to their government, they are also judges of the name to be imposed upon each man who is to have a part in the power: and it is as lawful for us to call him king, who has a limited authority amongst us, as for the Medes or Arabs to give the same name to one who is more absolute. If this be not admitted, we are content to speak improperly; but utterly deny, that when we give the

name, we give any thing more than we please; and had rather his majesty should change his name than to renounce our own rights and liberties, which he is to preserve, and which we have received from God and nature.

But that the folly and wickedness of our author may not be capable of any farther aggravation, he says, "That it matters not how he comes by the power." Violence, therefore, or fraud, treachery or murder, are as good as election, donation, or legal succession. It is in vain to examine the laws of God or man; the rights of nature; whether children do inherit the dignities and magistracies of their fathers, as patrimonial lands and goods; whether regard ought to be had to the fitness of the person; whether all should go to one, or be divided amongst them; or by what rule we may know who is the right heir to the succession, and consequently, what we are in conscience obliged to do. Our author tells us, in short, it matters not how he that has the power comes by it.

It has been hitherto thought, that to kill a king (especially a good king) was a most abominable action. They who did, were thought to be incited by the worst of passions that can enter into the heart of man; and the severest punishments have been invented to deter men from such attempts, or to avenge his death upon those who should accomplish it: but, if our author may be credited, it must be the most commendable and glorious act that can be performed by man: for, besides the outward advantages that men

so earnestly desire, he that does it, is presently invested with the sovereign majesty, and at the same time becomes God's vicegerent, and the father of his country, possessed of that government, which, in exclusion to all other forms, is only favoured by the laws of God and nature. The only inconvenience is, that all depends upon success, and he that is to be the minister of God, and father of his country, if he succeed, is the worst of all villains if he fail; and, at the best, may be deprived of all by the same means he employed to gain it. Though a prince should have the wisdom and virtues of Moses, the valour of Joshua, David, and the Macabees, with the gentleness and integrity of Samuel, the most foolish, vicious, base, and detestable man in the world that kills him, and seizes the power, becomes his heir, and father of the people that he governed; it matters not how he did it, whether in open battle, or by secret treachery, in the field, or in the bed, by poison, or by the sword: the vilest slave in Israel had become the Lord's anointed, if he could have killed David or Solomon, and found villains to place him in the throne. If this be right, the world has to this day lived in darkness, and the actions which have been thought to be the most detestable, are the most commendable and glorious. But not troubling myself at present to decide this question, I leave it to kings to consider how much they are beholden to Filmer, and his disciples, who set such a price upon their heads, as would render it hard to preserve their lives one day, if the doctrines were received which they endeavour to infuse into the minds of the peo-

ple; and concluding this point, only say, that we in England know no other king than he who is so by law, nor any power in that king except that which he has by law: and though the Roman empire was held by the power of the sword; and Ulpian, a corrupt lawyer, undertakes to say, that "the prince is not obliged by the laws;" yet Theodosius confessed, that it was the glory of a good emperor to acknowledge himself bound by them.

SECTION XXII.

THE RIGOUR OF THE LAW IS TO BE TEMPERED BY MEN OF KNOWN INTEGRITY AND JUDGMENT, AND NOT BY THE PRINCE, WHO MAY BE IGNORANT OR VICIOUS.

Our author's next shift is to place the king above the law, that he may mitigate the rigour of it; without which, he says, "the case of the subject would be desperately miserable." But this cure would prove worse than the disease. Such pious fathers of the people as Caligula, Nero, or Domitian, were not like to mitigate the rigour; nor such as inherit crowns in their infancy (as the present kings of Spain, France, and Sweden) so well to understand the meaning of it as to decide extraordinary cases. The wis-

dom of nations has provided more assured helps; and none could have been so brutish and negligent of the public concernments, as to suffer the succession to fall to women, children, &c. if they had not reserved a power in themselves to prefer others before the nearest in blood, if reason require; and prescribed such rules as might preserve the public from ruin, notwithstanding their infirmities and vices. These helps provided by our laws, are principally by grand and petit juries, who are not only judges of matters of fact, as whether a man be killed, but whether he be killed criminally. These men are upon their oaths, and may be indicted for perjury if they prevaricate: the judges are present, not only to be a check upon them, but to explain such points of the law as may seem difficult. And though these judges may be said, in some sense, to be chosen by the king, he is not understood to do it otherwise than by the advice of his council, who cannot perform their duty, unless they propose such as in their consciences they think most worthy of the office, and most capable of performing the duty rightly; nor he accomplish the oath of his coronation, unless he admit those, who, upon deliberation, seem to be the best.* The judges being thus chosen, are so far from depending upon the will of the king, that they swear faithfully to serve the people as well as the king, and to do justice to every man according to the law of the land, notwithstanding any writs, letters, or commands received from him; and in default thereof they are to for-

* 18 Edw. III. chap 1.

feit their bodies, lands, and goods, as in cases of treason. These laws have been so often, and so severely executed, that it concerns all judges well to consider them; and the cases of Tresilian, Empson, Dudley, and others, shew that neither the king's preceding command, nor subsequent pardon, could preserve them from the punishment they deserved. All men knew, that what they did was agreeable to the king's pleasure; for Tresilian advanced the prerogative of Edward the Second, and Empson brought great treasures into the coffers of Henry the Seventh. Nevertheless they were charged with treason for subverting the laws of the land, and executed as traitors. Though England ought never to forget the happy reign of Queen Elizabeth, yet it must be acknowledged, that she, as well as others, had her failings. She was full of love to the people, just in her nature, sincere in her intentions; but could not so perfectly discover the snares that were laid for her, or resist the importunity of the persons she most trusted, as not sometimes to be brought to attempt things against law. She and her counsellors pressed the judges very hardly to obey the patent under her great seal, in the case of Cavendish: but they answered, "That both she and they had taken an oath to keep the law; and, if they should obey her commands, the law would not warrant them," &c.* And besides the offence against God, their country, and the commonwealth, they alledged the example of

* Anderson's Rep. p. 155.

Empson, and Dudley, "whereby," they said, "they were deterred from obeying her illegal commands." They who had sworn to keep the law notwithstanding the king's writs, knew that the law depended upon his will; and the same oath that obliged them not to regard any command they should receive from him, shewed that they were not to expect indemnity by it, and not only that the king had neither the power of making, altering, mitigating, or interpreting the law, but that he was not at all to be heard, in general or particular matters, otherwise than as he speaks in the common course of justice, by the courts legally established, which say the same thing, whether he be young or old, ignorant or wise, wicked or good: and nothing does more evince the wisdom and care of our ancestors, in framing the laws and government we live under, than that the people did not suffer extremities by the vices or infirmities of kings, till an age more full of malice than those in which they lived, had found tricks to pervert the rule, and frustrate their honest intentions. It was not safe for the kings to violate their oaths by an undue interposition of their authority; but the ministers who served them in those violations, have seldom escaped punishment. This is to be understood when the deviations from justice are extreme and mischievous, for something must always be allowed to human frailty: the best have their defects, and none could stand, if a too exact scrutiny were made of all their actions. Edward the Third, about the twentieth year of his reign, acknowledged his own in Parliament, and as well for the ease of his conscience, as

the satisfaction of his people, promoted an act, "commanding all judges to do justice, notwithstanding any writs, letters, or commands from himself, and forbidding those that belonged to the king, queen, and prince, to intermeddle in those matters." But if the best and wisest of our princes, in the strength and maturity of their years, have had their failings, and every act proceeding from them, that tended to the interruption of justice, was a failing, how can it be said, that the king in his personal capacity, directly or indirectly, may enter into a discussion of these matters, much less to determine them according to his will?

"But," says our author, "the law is no better than a tyrant; general pardons, at the coronation, and in Parliament, are but the bounty of the prerogative, &c. There may be hard cases; and, citing some perverted pieces from Aristotle's ethics and politics, adds, "That when something falls out besides the general rule, then it is fit, that what the lawmaker hath omitted, or where he hath erred by speaking generally, it should be corrected and supplied, as if the law-maker were present that ordained it. The governor, whether he be one man or more, ought to be lord of these things, whereof it was impossible that the law should speak exactly." These things are in part true; but our author makes use of them as the devil does of scripture, to subvert the truth. There may be something of rigour in the law, that in some cases may be mitigated; and the law itself (in relation to England) does so far acknowl-

edge it, as to refer much to the consciences of juries, and those who are appointed to assist them; and the most difficult cases are referred to the Parliament as the only judges that are able to determine them. Thus the statute of the thirty-fifth Edward Third, enumerating the crimes then declared to be treason, leaves to future parliaments to judge what other facts equivalent to them may deserve the same punishment: and it is a general rule in the law, which the judges are sworn to observe, that difficult cases should be reserved till the Parliament meet, who are only able to decide them: and if there be any inconvenience in this, it is because they do not meet so frequently as the law requires, or by sinister means are interrupted in their sitting. But nothing can be more absurd than to say, that because the king does not call parliaments as the law and his oath require, that power should accrue to him, which the law and the consent of the nation have placed in them.

There is also such a thing in the law as a general or particular pardon, and the king may, in some degree, be entrusted with the power of giving it, especially for such crimes as merely relate to himself, as every man may remit the injuries done to himself; but the confession of Edward the Third, "That the oath of the crown had not been kept by reason of the grant of pardons contrary to statutes,"* and a new act made, "that all such charters of pardon from henceforth granted against the oath of the crown,

* 14 Edw. III. 15.

and the said statutes, should be held for none," demonstrate that this power was not in himself, but granted by the nation, and to be executed according to such rules as the law prescribed, and the Parliament approved.

Moreover, there have been many, and sometimes bloody contests for the crown, upon which the nation was almost equally divided; and it being difficult for them to know, or even for us who have all the parties before us, to judge which was the better side, it was understood, that he who came to be crowned by the consent of the people, was acceptable to all; and the question being determined, it was no way fit that he should have a liberty to make use of the public authority then in his hands, to revenge such personal injuries as he had, or might suppose to have received, which might raise new, and perhaps more dangerous troubles, if the authors of them were still kept in fear of being prosecuted; and nothing could be more unreasonable than that he should employ his power to the destruction of those who had consented to make him king. This made it a matter of course for a king, as soon as he was crowned, to issue out a general pardon; which was no more than to declare, that being now what he was not before, he had no enemy upon any former account. For this reason, Lewis the Twelfth of France, when he was incited to revenge himself against those, who, in the reign of his predecessor Charles the Eighth, had caused him to be imprisoned, with great danger of his life made this answer, "That the king of France

did not care to revenge the injuries done to the duke of Orleans:" and the last king of Sweden seemed no otherwise to remember who had opposed the queen's abdication, and his election, than by conferring honours upon them; because he knew they were the best men of the nation, and such as would be his friends, when they should see how he would govern, in which he was not deceived. But, lest all those who might come to the crown of England, should not have the same prudence and generosity, the kings were obliged by a custom of no less force than a law, immediately to put an end to all disputes, and the inconveniences that might arise from them. This did not proceed from the bounty of the prerogative (which I think is nonsense, for though he that enjoys the prerogative may have bounty, the prerogative can have none) but from common sense, from his obligation, and the care of his own safety; and could have no other effect in law, than what related to his person, as appears by the forementioned statute.

Pardons granted by act of Parliament are of another nature: for as the king, who has no other power than by law, can no otherwise dispense with the crimes committed against the laws than the law does enable him; the Parliament, that has the power of making laws, may entirely abolish the crimes, and unquestionably remit the punishment as they please.

Though some words of Aristotle's ethics are without any coherence shuffled together by our author,

with others taken out of his politics, I do not much except against them. No law made by man can be perfect, and there must be in every nation a power of correcting such defects as in time may arise or be discovered. This power can never be so rightly placed as "in the same hand that has the right of making laws, whether in one person or in many." If Filmer, therefore, can tell us of a place, where one man, or woman, however he or she be qualified, has the power of making laws, I will acknowledge, that not only the "hard cases," but as many others as he pleases, are referred to his or her judgment, and that they may give it, whether they have any understanding of what they do or not, whether they be drunk or sober, in their senses, or stark-mad. But as I know no such place, and should not be much concerned for the sufferings of a people that should bring such misery upon themselves, as must accompany an absolute dependence upon the unruly will of such a creature, I may leave him to seek it, and rest in a perfect assurance, that he does not speak of England, which acknowledges no other law than its own; and instead of receiving any from kings, does, to this day, obey none, but such as have been made by our ancestors, or ourselves, and never admitted any king that did not swear to observe them. And if Aristotle deserve credit, the power of altering, mitigating, explaining, or correcting, the laws of England, is only in the Parliament, because none but the Parliament can make them.

SECTION XXIII.

ARISTOTLE PROVES, THAT NO MAN IS TO BE ENTRUSTED WITH AN ABSOLUTE POWER, BY SHEWING, THAT NO ONE KNOWS HOW TO EXECUTE IT, BUT SUCH A MAN AS IS NOT TO BE FOUND.

Our author having falsely cited and perverted the sense of Aristotle, now brings him in, saying, "That a perfect kingdom is that wherein a king rules all according to his own will." But though I have read his books of government with some attention, I can find no such thing in them, unless the word which signifies "mere" or "absolute," may be justly translated into "perfect;" which is so far from Aristotle's meaning, that he distinguishes the absolute or despotical kingdoms from the legitimate; and commending the latter, gives no better name than that of "barbarous" to the first, which he says can agree only with the nature of such nations as are base and stupid, little differing from beasts; and having no skill to govern, nor courage to defend themselves, must resign all to the will of one that will take care of them. Yet even this cannot be done, unless he that should take care be wholly exempted from the vices which oblige the others to stand in need of it; for otherwise it is no better than if a sheep should undertake to govern sheep, or a hog to command

swine; Aristotle plainly saying, "That as men are by nature equal, if it were possible all should be magistrates."* But that being repugnant to the nature of government, he finds no other way of solving the difficulty, than by "obeying and commanding alternately;" that they may do by turns that which they cannot do altogether, and to which no one man has a right more than another, because they are all by nature equal. This might be composed by a more compendious way, if, according to our author's doctrine, possession could give a right. But Aristotle, speaking like a philosopher, and not like a public enemy of mankind, examines what is just, reasonable, and beneficial to men, that is, what ought to be done, and which, being done, is to be accounted just, and therefore to be supported by good men. But as that †"which is unjust in the beginning, can never have the effect of justice:" and it being manifestly unjust for one, or a few men, to assume a power over those who by nature are equal to them, no such power can be just or beneficial to mankind; nor fit to be upheld by good men, if it be unjust and prejudicial. In the opinion of Aristotle, this natural equality continues till virtue makes the distinction, which must be either simply complete and perfect in itself, so that he who is endued with it is a God among men, or relatively, as far as concerns

* Arist. Pol. l. ii. c. 1.

† Quod ab initio injustum est, nullum potest habere juris effectum. Grot. de jur. bel & pac. l. iii.

civil society, and the ends for which it is constituted, that is, defence, and the obtaining of justice. This requires a mind unbiassed by passion, full of goodness and wisdom, firm against all the temptations of ill, that may arise from desire or fear; tending to all manner of good through a perfect knowledge of it; and this to such a degree, that he or they have more of these virtues and excellencies than all the rest of the society, though computed together; where such a man is found, he is by nature a king, and it is best for the nation where he is, that he govern.* If a few men, though equal and alike among themselves, have the same advantages above the rest of the people, nature, for the same reason, seems to establish an aristocracy in that place: and the power is more safely committed to them, than left in the hands of the multitude. But if this excellency of virtue do not appear in one, nor in a few men, the right and power is by nature equally lodged in all; and to assume or appropriate that power to one, or a few men, is unnatural and tyrannical, which, in Aristotle's language, comprehends all that is detestable and abominable.

If any man should think Aristotle a trifler, for speaking of such a man as can never be found, I answer, that he went as far as his way could be warranted by reason or nature, and was obliged to stop there by the defect of his subject. He could not say, that the government of one was simply good, when

* Arist. Pol. l. ii.

he knew so many qualifications were required in the person to make it so ;* nor, that it is good for a nation to be under the power of a fool, a coward, or a villain, because it was good to be under a man of admirable wisdom, valour, industry, and goodness ; or that the government of one should be continued in such as by chance succeeded in a family, because it was given to the first who had all the virtues required, though all the reasons for which the power was given fail in the successor ; much less could he say, that any government was good, which was not good for those whose good only it was constituted to promote.

Moreover, by shewing who only is fit to be a monarch, or may be made such, without violating the laws of nature and justice, he shews who cannot be one : and he who says, that no such man is to be found, as, according to the opinion of Aristotle, can be a monarch, does most ridiculously alledge his authority in favour of monarchs, or the power which some amongst us would attribute to them. If any thing, therefore, may be concluded from his words, it is this ; that since no power ought to be admitted which is not just ; that none can be just which is not good, profitable to the people, and conducing to the ends for which it is constituted ; that no man can know how to direct the power of those ends, can deserve, or administer it, unless he does so far excel all those that are under him in wisdom, justice, valour,

* Barbeyrac trad. de Puf. liv. vii 5. not. 1.

and goodness, as to possess more of those virtues than all of them ; I say, if no such man, or succession of men, be found, no such power is to be granted to any man, or succession of men. But if such power be granted, the laws of nature and reason are overthrown, and the ends for which societies are constituted, utterly perverted, which necessarily implies an annihilation of the grant. And if a grant, so made by those who have a right of setting up a government among themselves, do perish through its own natural iniquity and perversity, I leave it to any man, whose understanding and manners are not so entirely corrupted as those of our author, to determine what name ought to be given to that person, who, not excelling all others in civil and moral virtues, in the proportion required by Aristotle, does usurp a power over a nation, and what obedience the people owe to such a one. But if his opinion deserve our regard, the king, by having those virtues, is "*omnium optimus*," and the best guide to the people, "* to lead them to happiness by the ways of virtue." And he who assumes the same power, without the qualifications required, is "*tyrannus omnium pessimus*," leading the people to all manner of ill, and, in consequence, to destruction.

* Ad summum bonum secundum virtutem. ARIST. POL.

SECTION XXIV.

THE POWER OF AUGUSTUS CAESAR WAS NOT GIVEN, BUT USURPED.

Our author's next instance is ingeniously taken from the Romans, "who," he says, "though they were a people greedy of liberty, freed Augustus from the necessity of laws." If it be true, as he affirms, that such a prerogative is instituted only for the preservation of liberty, they who are most greedy of it, ought to be most forward in establishing that which defends it best. But if the weight laid upon the words "greedy of liberty, &c." render his memory and judgment liable to censure, the unpardonable prevarication of citing any act done by the Romans in the time of Augustus, as done freely, shews him to be a man of no faith. "*Omnium jura in se traxerat*," says Tacitus of Augustus;* nothing was conferred upon him, he took all to himself; there could be nothing of right in that which was wholly usurped. And neither the people nor the senate could do any thing freely, whilst they were under the power of a mad, corrupted soldiery, who first betrayed, and then subdued them. The greatest part of the senate had fallen at the battle of Pharsalia, others had been gleaned up in several places, the rest destroyed by

* Annal. l. i.

the proscriptions; and that which then retained the name of a senate, was made up chiefly of those who had been his ministers, in bringing the most miserable slavery upon their own country. The Roman liberty, and that bravery of spirit by which it had been maintained, were not only abolished, but almost forgotten. All consideration of law and right was trampled under foot; and none could dispute with him, who, by the power of the sword, had seized the authority both of the senate and people. Nothing was so extravagant, that might not be extorted by the insolent violence of a conqueror, who had thirty mercenary legions to execute his commands. The uncorrupted part of the people, that had escaped the sword of Julius, had either perished with Hirtius and Pansa, Brutus and Cassius, or been destroyed by the detestable triumvirate. Those that remained could lose nothing by a verbal resignation of their liberty, which they had neither strength nor courage to defend. The magistracies were possessed by the creatures of the tyrant; and the people was composed of such as were either born under slavery, and accustomed to obey, or remained under the terror of those arms that had consumed the assertors of their liberty. Our author, standing in need of some Roman example, was obliged to seek it in an age, when the laws were subverted, virtue extinguished, injustice placed on the throne, and such as would not be of the same spirit, exposed to the utmost cruelty. This was the time when the sovereign majesty shined in glory; and they who had raised it above the law, made it also the object of their re

ligion, by adoring the statutes of their oppressor. The corruption of this court spread itself over the best part of the world; and reduced the empire to that irrecoverable weakness in which it languished and perished. This is the state of things that pleases Filmer, and those that are like him, who, for the introduction of the same among us, recommend such an elevation of the sovereign majesty, as is most contrary to the laws of God and men, abhorred by all generous nations, and most especially by our ancestors, who thought nothing too dear to be hazarded in the defence of themselves and us from it.

SECTION XXV.

THE REGAL POWER WAS NOT THE FIRST IN THIS NATION; NOR NECESSARILY TO BE CONTINUED, THOUGH IT HAD BEEN THE FIRST.

Truth being uniform in itself, those who desire to propagate it for the good of mankind, lay the foundations of their reasonings in such principles, as are either evident to common sense, or easily proved: but cheats and impostors, delighting in obscurity, suppose things that are dubious or false, and think to build one falsehood upon another; and our author can find no better way to persuade us, that all our

privileges and laws are from the king, than by saying, "that the first power was the kingly power, which was both in this and all other nations in the world, long before any laws, or any other kind of government was thought of; from whence we must necessarily infer, that the common law, or common customs of this land, were originally the laws and commands of the king." But denying both these points, I affirm,

1. First, that there was a power to make kings before there was any king.

2. Though kings had been the first created magistrates in all places (as perhaps they were in some) it does not follow, that they must continue forever, or that laws are from them.

To the first. I think no man will deny, that there was a people at Babylon before Nimrod was king of that place. This people had a power; for no number of men can be without it: nay, this people had a power of making Nimrod king, or he could never have been king. He could not be king by succession, for the scripture shews him to have been the first. He was not king by the right of a father, for he was not their father, Chush, Ham, with his elder brothers, and father Noah, being still living; and, which is worst of all, were not kings: for if they who lived in Nimrod's time, or before him, neither were kings, nor had kings, he that ought to have been king over all by the right of nature (if there

had been any such thing in nature) was not king. Those who immediately succeeded him, and must have inherited his right, if he had any, did not inherit, or pretend to it: and, therefore, he that shall now claim a right from nature, as father of a people, must ground it upon something more certain than Noah's right of reigning over his children, or it can have no strength in it.

Moreover, the nations who in, and before, the time of Nimrod had no kings, had power, or else they could have performed no act, nor constituted any other magistrate, to this day, which is absurd. There was, therefore, a power in nations before there were kings, or there could never have been any; and Nimrod could never have been king, if the people of Babylon had not made him king, which they could not have done if they had not a power of making him so. It is ridiculous to say he made himself king, for though he might be strong and valiant, he could not be stronger than a multitude of men. That which forces must be stronger than that which is forced; and if it be true, according to the ancient saying, that Hercules himself is not sufficient to encounter two, it is, surely, more impossible for one man to force a multitude, for that must be stronger than he. If he came in by persuasion, they who were persuaded, were persuaded to consent that he should be king. That consent, therefore, made him king. But, "*qui dat esse, dat modum esse:*" they who made him king, made him such a king as best pleas-

ed themselves. He had, therefore, nothing but what was given: his greatness and power must be from the multitude who gave it: and their laws and liberties could not be from him: but their liberties were naturally inherent in themselves, and their laws were the product of them.

There was a people that made Romulus king. He did not make or beget that people, nor, for any thing we know, one man of them. He could not come in by inheritance, for he was a bastard, the son of an unknown man; and when he died, the right that had been conferred upon him reverted to the people, who, according to that right, chose Numa, Hostilius, Martius, Tarquinius Priscus, and Servius, all strangers, and without any other right than what was bestowed upon them; and Tarquinius Superbus, who invaded the throne "* without the command of the people;" was ejected, and the government of kings abolished, by the same power that had created it.

We know not certainly by what law Moses, and the judges, created by the advice of Jethro, governed the Israelites; but may probably conjecture it to have been by that law which God had written in the hearts of mankind; and the people submitted to the judgment of good and wise men, though they were under no coercive power: but it is certain they had a law, and a regular magistracy, under which they

* Sine jussu populi. T. Liv. l. i.

lived four hundred years before they had a king, for Saul was the first. This law was not, therefore, from the king, nor by the king; but the king was chosen and made by the people, according to the liberty they had by the law, though they did not rightly follow the rules therein prescribed, and by that means brought destruction upon themselves.

The country in which we live lay long concealed under obscure barbarity, and we know nothing of the first inhabitants, but what is involved in fables, that leave us still in the dark. Julius Cæsar is the first who speaks distinctly on our affairs, and gives us no reason to believe there was any monarchy then established amongst us. Cassivellaunus was occasionally chosen by the nations that were most exposed to the violence of the Romans, for the management of those wars against them.* By others we hear of Boadicia, Arviragus, Galgacus, and many more set up afterwards, when need required; but we find no footsteps of a regular succession either by inheritance or election. And as they had then no kings, nor any other general magistrate, that can be said to be equivalent to a king, they might have had none at all unless they had thought fit. Tacitus mentions a sort of kings used by the Romans to keep † nations in servitude to them; and though it were true, that there had been such a man as Lucius, and he one of this sort, he is to be accounted only

* Jul. Cæs. Comment. l. v.

† Inter instrumenta servitutus reges habuere. C. Tacit.

as a Roman magistrate, and signifies no more to our dispute, than if he had been called proconsul, prætor, or by any other name. However, there was no series of them: that which was temporary and occasional, depended upon the will of those, who, thinking there was occasion, created such a magistrate, and omitted to do so, when the occasion ceased, or was thought to cease; and might have had none at all, if they had so pleased. The magistracy, therefore, was from them, and depended upon their will.

We have already mentioned the histories of the Saxons, Danes, and Normans, from which nations, together with the Britons, we are descended, and, finding that they were severe assertors of their liberties, acknowledged no human laws but their own, received no kings but such as swore to observe them, and deposed those who did not well perform their oaths and duty, it is evident, that their kings were made by the people according to the law, and that the law, by which they became what they were, could not be from themselves. Our ancestors were so fully convinced, that in the creation of kings they exercised their own right, and were only to consider what was good for themselves, that, without regard to the memory of those who had gone before, they were accustomed to take such as seemed most like wisely, justly, and gently, to perform their office; refused those that were suspected of pride, cruelty, or any other vice that might bring prejudice upon the public, what title soever they pretended; and removed such as had been placed on the throne, if they did

not answer the opinion conceived of their virtue; which I take to be a manner of proceeding that agrees better with the quality of masters, making laws and magistrates for themselves, than of slaves receiving such as were imposed upon them.

2. To the second. Though it should be granted, that all nations had at the first been governed by kings, it were nothing to the question; for no man, or number of men, was ever obliged to continue in the errors of his predecessors. The authority of custom, as well as of law (I mean in relation to the power that made it to be) consists only in its rectitude; and the same reason which may have induced one or more nations to create kings, when they knew no other form of government, may not only induce them to set up another, if that be found inconvenient to them, but proves, that they may as justly do so, as remove a man who performs not what was expected from him. If there had been a rule given by God, and written in the minds of men by nature, it must have been from the beginning; universal and perpetual; or at least must have been observed by the wisest and best instructed nations: which not being in any measure (as I have proved already) there can be no reason why a polite people should not relinquish the errors committed by their ancestors in the time of their barbarism and ignorance; and why they should not do it in matters of government, as well as in any other thing relating to life. Men are subject to errors, and it is the work of the best and wisest to discover and amend such as their ancestors may have

committed, or to give perfection to those things which by them have been well invented. This is so certain, that whatsoever we enjoy beyond the misery in which our barbarous ancestors lived, is due only to the liberty of correcting what was amiss in their practice, or inventing that which they did not know; and I doubt whether it be more brutish to say, we are obliged to continue in the idolatry of the Druids, with all the miseries and follies that accompany the most savage barbarity, or to confess, that though we have a right to depart from these, yet we are forever bound to continue the government they had established, whatever inconveniences might attend it. Tertulian, disputing with the Pagans, who objected the novelty of the christian religion, troubled not himself with refuting that error: * but proving christianity to be good and true, he thought he had sufficiently proved it to be ancient. A wise architect may shew his skill, and deserve commendation for building a poor house of vile materials, when he can procure no better, but he no way ought to hinder others from erecting more glorious fabrics if they are furnished with the means required. Besides, such is the imperfection of all human constitutions, that they are subject to perpetual fluctuation, which never permits them to continue long in the same condition: corruptions slide insensibly in; and the best orders are sometimes subverted by malice and violence; so that he who only regards what was done in such an age, often takes the corruption of the state for the institution, follows

* Nullum tempus, nulla præscriptio, occurrit veritati. Id antiquius quod. Ibid verius. TERTUL.

the worst example, thinks that to be the first that is the most ancient he knows; and if a brave people, seeing the original defects of their government, or the corruption into which it may be fallen, do either correct and reform what may be amended, or abolish that which was evil in the institution, or so perverted, that it cannot be restored to integrity, these men impute it to sedition, and blame those actions, which, of all that can be performed by men, are the most glorious. We are not, therefore, so much to inquire of that which is most ancient, as that which is best, and most conducing to the good ends to which it was directed. As governments were instituted for the obtaining of justice, and (as our author says) the preservation of liberty. For whatsoever the institution be, and how long soever it may have lasted, it is void, if it thwart, or do not provide for, the ends of its establishment. If such a law or custom, therefore, as is not good in itself, had in the beginning prevailed in all parts of the world (which in relation to absolute, or any kind of monarch, is not true) it ought to be abolished; and if any man should shew himself wiser than others, by proposing a law or government more beneficial to mankind than any that had been formerly known, providing better for justice and liberty than all others had done, he would merit the highest veneration. If any man ask, who shall be judge of that rectitude or pravity which either authorizes or destroys a law? I answer, that as this consists not in formalities and niceties, but in evident and substantial truths, there is no need of any other tribunal than that of common sense, and the light of

nature, to determine the matter: and he that travels through France, Italy, Turky, Germany, and Switzerland, without consulting Bartolus or Baldus, will easily understand whether the countries that are under the kings of France and Spain, the Pope and the Great Turk, or such as are under the care of a well regulated magistracy, do best enjoy the benefits of justice and liberty. It is as easily determined whether the Grecians, when Athens and Thebes flourished, were more free than the Medes; whether justice was better administered by Agathocles, Dionysius, and Phalaris, than by the legal kings and regular magistrates of Sparta; or whether more care was taken, that justice and liberty might be preserved by Tiberius, Caligula, Claudius, Nero, and Vitellius, than by the senate and people of Rome, whilst the laws were more powerful than the commands of men. The like may be said of particular laws, as those of Nabuchodonosor and Caligula, for worshipping their statues; or acts of Parliament against heretics and Lollards, with the statutes and orders of the inquisition, which is called the holy office. And if that only be a law which is "*sanctio recta, jubens honesta, prohibens contraria*," the meanest understandings, if free from passion, may certainly know, that such as these cannot be laws, by what authority soever they were enacted, and that the use of them, and others like to them, ought to be abolished for their turpitude and iniquity. Infinite examples of the like nature might be alledged, as well concerning divine as human things. And if there be any laws which are evil, there cannot be an incontestable rectitude in all, it

concerns us to examine where it is to be found. Laws and constitutions ought to be weighed, and whilst all due reverence is paid to such as are good, every nation may not only retain in itself a power of changing or abolishing all such as are not so, but ought to exercise that power according to the best of their understanding, and in the place of what was either at first mistaken, or afterwards corrupted, to constitute that which is most conducive to the establishment of justice and liberty.

But such is the condition of mankind, that nothing can be so perfectly framed as not to give some testimony of human imbecility, and frequently to stand in need of reparations and amendments. Many things are unknown to the wisest, and the best men can never wholly divest themselves of passions and affections. By these means the wisest and best are sometimes led into error, and stand in need of successors like to themselves, who may find remedies for the faults they have committed, and nothing can, nor ought to be permanent, but that which is perfect. No natural body was ever so well tempered and organized, as not to be subject to diseases, wounds, or other accidents, and to need medicines, and other occasional helps, as well as nourishment and exercise; and he who, under the name of innovation, would deprive nations of the like, does, as much as lies in him, condemn them all to perish by the defects of their own foundations. Some men observing this, have proposed a necessity of reducing every state, once in an

age or two, to the integrity of its first principle :* but they ought to have examined, whether that principle be good or evil, or so good, that nothing can be added to it, which none ever was ; and this being so, those who would admit of no change, would render errors perpetual, and, depriving mankind of the benefits of wisdom, industry, experience, and the right use of reason, oblige all to continue in the miserable barbarity of their ancestors, which suits better with the name of a wolf than that of a man.

Those who are of better understanding, weigh all things, and often find reason to abrogate that which their fathers, according to the measure of the knowledge they had, or the state of things among them, had rightly instituted, or to restore that which they had abrogated ; and there can be no greater mark of a most brutish stupidity, than for men to continue in an evil way, because their fathers had brought them into it. But if we ought not too strictly to adhere to our own constitutions, those of other nations are less to be regarded by us ; for the laws that may be good for one people are not so for all, and that which agrees with the manners of one age, is utterly abhorrent from those of another. It were absurd to think of restoring the laws of Lycurgus to the present inhabitants of Peloponnesus, who are accustomed to the most abject slavery. It may easily be imagined, how the Romans, Sabines, and Latins, now under the tyranny of the Pope, would relish such a discip-

* Discors. di Macchiav. lib. ii.

line as flourished among them after the expulsion of the Tarquins; and it had been no less preposterous to give a liberty to the Parthians of governing themselves, or for them to assume it, than to impose an absolute monarch upon the German nation. Titus Livius,* having observed this, says, that if a popular government had been set up in Rome immediately upon the building of the city; and if that fierce people, which was composed of unruly shepherds, herdsmen, fugitive slaves, and out-lawed persons, who could not suffer the governments under which they were born, had come to be incited by† turbulent orators, they would have brought all into confusion; whereas, that boisterous humour being gradually tempered by discipline under Romulus, or taught to vent its fury against foreign enemies, and softened by the peaceable reign of Numa, a new race grew up, which, being all of one blood, contracted a love to their country, and became capable of liberty, which the madness of their last king, and the lewdness of his son, gave them occasion to resume. If this was commendable in them, it must be so in other nations. If the Germans might preserve their liberty, as well as the Parthians submit themselves to absolute monarchy, it is as lawful for the descendants of those Germans to continue in it, as for the eastern nations to be slaves. If one nation may justly chuse the government that seems best to it, and continue or alter it according to the changes of times and things, the same right must belong to others. The

* Hist. l. ii. c. 1. † Tribuniciis procellis.

great variety of laws that are, or have been, in the world, proceed from this; and nothing can better shew the wisdom and virtue, or the vices and folly of nations, than the use they make of this right: they have been glorious or infamous, powerful or despicable, happy or miserable, as they have well or ill executed it.

If it be said, that the law given by God to the Hebrews, proceeding from his wisdom and goodness, must needs be perfect and obligatory to all nations; I answer, that there is a simple and a relative perfection; the first is only in God, the other in the things he has created: "He saw that they were good;"* which can signify no more than that they were good in their kind, and suited to the end for which he designed them. For, if the perfection were absolute, there could be no difference between an angel and a worm, and nothing could be subject to change or death; for that is imperfection. This relative perfection is seen also by his law given to mankind, in the persons of Adam and Noah. It was good in the kind, fit for those times; but could never have been enlarged or altered, if the perfection had been simple; and no better evidence can be given to shew, that it was not so, than that God did afterwards give one much more full and explicit to his people. This law was also peculiarly applicable to that people and season; for if it had been otherwise, the apostles would have obliged

* Gen. i.

christians to the entire observation of it, as well as to abstain from idolatry, fornication, and blood. But if all this be not so, then their judicial law, and the form of their commonwealth, must be received by all; no human law can be of any value; we are all brethren; no man has a prerogative above another; lands must be equally divided amongst all; inheritances cannot be alienated for above fifty years; no man can be raised above the rest, unless he be called by God, and enabled by his Spirit to conduct the people; when this man dies, he that has the same Spirit must succeed, as Joshua did to Moses, and his children can have no title to his office: when such a man appears, a sanhedrim of seventy men, chosen out of the whole people, are to judge such causes as relate to themselves, whilst those of greater extent and importance are referred to the general assemblies. Here is no mention of a king; and consequently, if we must take this law for our pattern, we cannot have one: if the point be driven to the utmost, and the precept of Deuteronomy, where God permitted them to have a king, if they thought fit when they came into the promised land, be understood to extend to all nations, every one of them must have the same liberty of taking their own time, chusing him in their own way, dividing the kingdom, having no king, and setting up other governors when they please, as before the election of Saul, and after the return from the captivity: and even when they have a king, he must be such a one as is described in the same chapter, who no more resembles the sovereign majesty that our author

adores, and agrees as little with his maxims, as a tribune of the Roman people.

We may therefore conclude, that if we are to follow the law of Moses, we must take it with all the appendages; a king can be no more, and no otherwise, than he makes him: for whatever we read of the kings they had, were extreme deviations from it. No nation can make any law; and our lawyers, burning their books, may betake themselves to the study of the pentateuch; in which though some of them may be well versed, yet probably the profit arising from thence will not be very great.

But, if we are not obliged to live in conformity to the law of Moses, every people may frame laws for themselves, and we cannot be denied the right that is common to all. Our laws were not sent from heaven, but made by our ancestors according to the light they had, and their present occasions. We inherit the same right from them, and as we may without vanity say, that we know a little more than they did, if we find ourselves prejudiced by any law that they made, we may repel it. The safety of the people was their supreme law, and is so to us; neither can we be thought less fit to judge what conduces to that end, than they were. If they in any age had been persuaded to put themselves under the power, or, in our author's phrase, under the sovereign majesty of a child, a fool, a mad or desperately wicked person, and had annexed the right conferred upon him, to such as should succeed, it had not been a

"just and right sanction;" and, having none of the qualities essentially belonging to a law, could not have the effect of a law. It cannot be for the good of a people to be governed by one, who by nature ought to be governed, or by age or accident is rendered unable to govern himself. The public interests, and the concernments of private men in their lands, goods, liberties, and lives (for the preservation of which, our author says, that regal prerogative is only constituted) cannot be preserved by one who is transported by his own passions or follies, a slave to his lusts and vices; or, which is sometimes worse, governed by the vilest of men and women, who flatter him in them, and push him on to do such things as even they would abhor, if they were in his place. The turpitude and impious madness of such an act must necessarily make it void, by overthrowing the ends for which it was made, since that justice which was sought cannot be obtained, nor the evils that were feared, prevented; and they for whose good it was intended must necessarily have a right of abolishing it. This might be sufficient for us, though our ancestors had enslaved themselves. But, God be thanked, we are not put to that trouble: we have no reason to believe we are descended from such fools and beasts, as would willingly cast themselves, and us, into such an excess of misery and shame, or that they were so tame and cowardly to be subjected by force or fear. We know the value they set upon their liberties, and the courage with which they defended them: and we can have no better example to encourage us never to suffer them to be violated or diminished.

SECTION XXVI.

THOUGH THE KING MAY BE ENTRUSTED WITH THE POWER OF CHUSING JUDGES, YET THAT BY WHICH THEY ACT IS FROM THE LAW.

I CONFESS, that no law can be so perfect, "to provide exactly for every case that may fall out, so as to leave nothing to the discretion of the judges," who in some measure are to interpret them: but "that laws or customs are over few, or that the paucity is the reason that they cannot give special rules, or that judges do resort to those principles, or common law axioms, whereupon former judgments, in cases something alike, have been given by former judges, who all receive their authority from the king in his right to give sentence," I utterly deny; and affirm,

1. That in many places, and particularly in England, the laws are so many, that the number of them has introduced an uncertainty and confusion, which is both dangerous and troublesome; and the infinite variety of adjudged cases, thwarting and contradicting each other, have rendered these difficulties inextricable. Tacitus imputes a great part of the miseries suffered by the Romans in his time to this abuse, and tells us, that "* the laws grew to be innumera-

* Et in corruptissima republica plurimæ leges.

ble in the worst and most corrupt state of things," and that justice was overthrown by them. By the same means in France, Italy, and other places, where the civil law is rendered municipal, judgments are in a manner arbitrary; and though the intention of our laws be just and good, they are so numerous, and the volumes of our statutes, with the interpretations, and adjudged cases, so vast, that hardly any thing is so clear and fixed, but men of wit and learning may find what will serve for a pretence to justify almost any judgment they have a mind to give. Whereas, the laws of Moses, as to the judicial part, being short and few, judgments were easy and certain; and in Switzerland, Sweden, and some parts of Denmark, the whole volume that contains them may be read in few hours, and by that means no injustice can be done which is not immediately made evident.

2. Axioms are not rightly grounded upon judged cases; but cases are to be judged according to axioms: the certain is not proved by the uncertain, but the uncertain by the certain; and every thing is to be esteemed uncertain, till it be proved to be certain. Axioms in law are, as in mathematics, evident to common sense; and nothing is to be taken for an axiom, that is not so. Euclid does not prove his axioms by his propositions, but his propositions, which are abstruse, by such axioms as are evident to all. The axioms of our law do not receive their authority from Coke or Hales, but Coke and Hales deserve praise for giving judgment according to such as are undeniably true.

3. The judges receive their commission from the king; and perhaps it may be said, that the custom of naming them is grounded upon a right with which he is intrusted; but their power is from the law, as that of the king also is. For he who has none originally in himself, can give none, unless it be first conferred upon him. I know not how he can well perform his oath to govern according to law, unless he execute the power with which he is intrusted, in naming those men to be judges, whom in his conscience, and by the advice of his council, he thinks the best and ablest to perform that office: but both he and they are to learn their duty from that law, by which they are, and which allots to every one his proper work. As the law intends, that men should be made judges for their integrity and knowledge in the law, and that it ought not to be imagined, that the king will break his trust by chusing such as are not so, till the violation be evident, nothing is more reasonable than to intend, that the judges so qualified should instruct the king in matters of law. But that he who may be a child, over-aged, or otherwise ignorant and incapable, should instruct the judges, is equally absurd, as for a blind man to be a guide to those who have the best eyes, and so abhorrent from the meaning of the law, that the judges (as I said before) are sworn to do justice according to the laws, without any regard to the king's words, letters, or commands: if they are, therefore, to act according to a set rule, from which they may not depart, what command soever they receive, they do not act by a power from him, but by

one that is above both. This is commonly confessed; and though some judges have been found in several ages, who, in hopes of reward and preferment, have made little account of their oath, yet the success that many of them have had, may reasonably deter others from following their example; and if there are not more instances in this kind, no better reason can be given, than that* nations do frequently fail, by being too remiss in asserting their own rights, or punishing offenders, and hardly ever err on the severer side.

4. Judgments are variously given in several states and kingdoms; but he who would find one where they lie in the breast of the king, must go at least as far as Morocco. Nay, the ambassador who was lately here from that place, denied that they were absolutely in him. However it is certain, that in England, according to the great charter, "† judgments are passed by equals:" no man can be imprisoned, disseized of his freehold, deprived of life or limb, "‡ unless by the sentence of his peers." The kings of Judah did "§ judge and were judged;" and the judgments they gave, were in, and with, the sanhedrim. In England the kings do not

* Jure igitur plectimur; nisi enim multorum impunita scelera tulissemus, nunquam ad unum tanta pervenisset licentia. CICERO.

† Judicia fiunt per pares. MAG. CHART.

‡ Nisi per judicium parium suorum. Ibid.

§ Judicabant & judicabantur. MAIMONID.

judge, but are judged: and Bracton says, " * that in receiving justice the king is equal to another man;" which could not be, if judgments were given by him, and he were exempted from the judgment of all, by that law which has put all judgments into the hands of the people. This power is executed by them in grand or petty juries, and the judges are assistants to them, in explaining the difficult points of the law, in which, it is presumed, they should be learned. The strength of every judgment consists in the verdict of these juries, which the judges do not give, but pronounce or declare: and the same law that makes good a verdict given contrary to the advice or direction of the judges, exposes them to the utmost penalties, if, upon their own heads, or a command from the king, they should presume to give a sentence without, or contrary to, a verdict; and no pretensions to a power of interpreting the law can exempt them, if they break it. The power also, with which the judges are entrusted, is but of a moderate extent, and to be executed " *bona fide.*" Prevarications are capital, as they proved to Tresilian, Empson, Dudley, and many others. Nay, even in special verdicts, the judges are only assistants to the juries, who find it specially, and the verdict is from them, though the judges, having heard the point argued, declare the sense of the law thereupon. Wherefore, if I should grant, that the king might personally assist in judgments, his work could only be to prevent frauds, and, by the advice

† In justitia recipienda rex cuilibet ex plebe æqualis est.

of the judges, to see that the laws be duly executed, or perhaps to inspect their behaviour. If he has more than this, it must be by virtue of his politic capacity, in which he is understood to be always present in the principal courts, where justice is always done, whether he who wears the crown be young or old, wise or ignorant, good or bad, or whether he like or dislike what is done.

Moreover, as governments are instituted for the obtaining of justice, and the king is in a great measure entrusted with the power of executing it, it is probable that the law would have required his presence in the distribution, if there had been but one court; that at the same time he could be present in more than one; that it were certain he would be guilty of no miscarriages; that all miscarriages were to be punished in him, as well as in the judges; or that it were certain he should always be a man of such wisdom, industry, experience, and integrity, as to be an assistance to, and a watch over, those who are appointed for the administration of justice. But there being many courts sitting at the same time, of equal authority, in several places far distant from each other; impossible for the king to be present in all; no manner of assurance that the same, or greater, miscarriages may not be committed in his presence than in his absence, by himself than others; no opportunity of punishing every delict in him, without bringing the nation into such disorder, as may be of more prejudice to the public, than an injury done to a private man; the law, which intends to obviate

offences, or to punish such as cannot be obviated, has directed, that those men should be chosen, who are most knowing in it; imposes an oath upon them, not to be diverted from the due course of justice by fear or favour, hopes or reward, particularly by any command from the king; and appoints the severest punishments for them, if they prove false to God, and their country.

If any man think, that the words cited from Bracton by our author upon the question, "*Quis primo & principaliter possit et debeat judicare, &c. Sciendum est quod rex, & non alius, si solus ad hæc sufficere possit, cum ad hoc per virtutem sacramenti teneatur*," are contrary to what I have said, I desire the context may be considered, that his opinion may be truly understood, though the words, taken simply and nakedly, may be enough for my purpose. For it is ridiculous to infer, that the king has a right of doing any thing, upon a supposition that it is impossible for him to do it. He, therefore, who says the king cannot do it, says it must be done by others, or not at all. But, having already proved, that the king, merely as king, has none of the qualities required for judging all, or any cases; and that many kings have all the defects of age and person, that render men most unable and unfit to give any sentence; we may conclude, without contradicting Bracton, that no king, as king, has a power of judging, because some of them are utterly unable and unfit to do it: and if any one has such a power, it must be conferred upon him by those who think him able and fit to perform that work.

When Filmer finds such a man, we must enquire into the extent of that power which is given to him: but this would be nothing to his general proposition; for he himself would hardly have inferred, that because a power of judging in some cases was conferred upon one prince, on account of his fitness and ability, therefore all of them, however unfit and unable, have a power of deciding all cases. Besides, if he believe Bracton, this power of judging is not inherent in the king, but incumbent upon him, by virtue of his oath, which our author endeavours to enervate and annul. But as that oath is grounded upon the law, and the law cannot presume impossibilities and absurdities, it cannot intend, and the oath cannot require, that a man should do that which he is unable and unfit to do. Many kings are unfit to judge causes: the law cannot, therefore, intend they should do it. The context also shews, that this imagination of the king's judging all causes, if he could, is merely chimerical: for Bracton says, in the same chapter, that "the power of the king is the power of the law;" that is, that he has no power but by the law. And the law that aims at justice, cannot make it to depend upon the uncertain humour of a child, a woman, or a foolish man; for by that means it would destroy itself. The law cannot, therefore, give any such power, and the king cannot have it.

If it be said, that all kings are not so; that some are of mature age, wise, just, and good; or, that the question is, not what is good for the subject, but what is glorious to the king; and that he must not

lose his right, though the people perish; I answer, first, that whatsover belongs to kings, as kings, belongs to all kings: this power of judging cannot belong to all, for the reasons above mentioned: it cannot therefore belong to any, as king, nor, without madness, be granted to any, till he has given testimony of such wisdom, experience, diligence, and goodness, as is required for so great a work. It imports not what his ancestors were; virtues are not intailed: and it were less improper for the heirs of Hales and Harvey to pretend, that the clients and patients of their ancestors should depend upon their advice, in matters of law and physic, than for the heirs of a great and wise prince, to pretend to powers given on account of virtue, if they have not the same talents for the performance of the works required.

Common sense declares, that governments are instituted, and judicatures erected, for the obtaining of justice. The king's bench was not established, that the chief justice should have a great office, but that the oppressed should be relieved, and right done. The honour and profit he receives, come in as it were by accident, as the rewards of his service, if he rightly perform his duty: but he may as well pretend he is there for his own sake, as the king. God did not set up Moses or Joshua, that they might glory in having six hundred thousand men under their command, but that they might lead the people into the land they were to possess; that is, that they were not for themselves, but for the people; and the glory they acquired was, by rightly

performing the end of their institution. Even our author is obliged to confess this, when he says, that the king's prerogative is instituted for the good of those that are under it. It is, therefore, for them that he enjoys it, and it can no otherwise subsist, than in concurrence with that end. He also yields, that "the safety of the people is the supreme law." The right, therefore, that the king has, must be conformable and subordinate to it. If any one, therefore, set up an interest in himself, that is not so, he breaks this supreme law; he doth not live and reign for his people, but for himself, and, by departing from the end of his institution, destroys it; and, if Aristotle* (to whom our author seems to have a great deference) deserves credit, such a one ceases to be a king, and becomes a tyrant; he who ought to have been the best of men, is turned into the worst; and he who is recommended to us under the name of a father, becomes a public enemy to the people. The question, therefore, is not, what is good for the king, but what is good for the people; and he can have no right repugnant to them.

Bracton is not more gentle. "The king," says he, "is obliged by his oath, to the utmost of his power to preserve the church, and the christian world, in peace; to hinder rapine, and all manner of iniquity; to cause justice and mercy to be observed: he has no power but from the law: that only is to be taken

* Polit. l. i.

for law, *quod recte fuerit definitum :*" he is, therefore, to cause justice to be done according to that rule, and not to pervert it for his own pleasure, profit, or glory. He may choose judges also, not such as will be subservient to his will, but "*viros sapientes, timentes Deum, in quibus est veritas eloquiorum, & qui oderunt avaritiam.*"* Which proves that kings, and their officers, do not possess their places for themselves, but for the people, and must be such as are fit and able to perform the duties they undertake. The mischievous fury of those who assume a power above their abilities, is well represented by the known fable of Phaeton : they think they desire fine things for themselves, when they seek their own ruin. In conformity to this, the same Bracton says, that † "If any man who is unskilful, assume the seat of justice, he falls as from a precipice, &c. and it is the same thing, as if a sword be put into the hand of a madman ;" which cannot but affect the king, as well as those who are chosen by him. If he neglect the functions of his office, "he does unjustly, and becomes the vicegerent of the devil ; for he is the minister of him whose works he does." This is Bracton's opinion : but, desiring to be a more gentle interpreter of the law, I only wish, that princes would consider the end of their institution ; endeavour to perform it ; measure their own abilities ; content themselves with that power which the laws allow ;

* Bract. l. iii. c. 10.

† Si quis minus sapiens & indoctus sedem judicandi & honestatem judicandi sibi præsumserit, ex alto corruit, &c. & perinde erit ac si gladium poneret in manu furentis. Ibid.

and abhor those wretches, who, by flattery and lies, endeavour to work upon the frailest passions, by which means they draw upon them that hatred of the people, which frequently brings them to destruction.

Though Ulpian's words, "*Princeps legibus non tenetur*," be granted to have been true in fact, with relation to the Roman empire, in the time when he lived; yet they can conclude nothing against us. The liberty of Rome had been overthrown long before, by the power of the sword, and the law rendered subservient to the will of the usurpers. They were not Englishmen, but Romans, who lost the battles of Pharsalia and Philippi: the carcases of their senators, not ours, were exposed to the wolves and vultures: Pompeius, Scipio, Lentulus, Afranius, Petreius, Cato, Cassius, and Brutus, were defenders of the Roman, not the English, liberty; and that of their country, not ours, could only be lost by their defeat. Those who were destroyed by the proscriptions, left Rome, not England, to be enslaved. If the best had gained the victory, it could have been no advantage to us, and their overthrow can be no prejudice. Every nation is to take care of its own laws; and whether any one has had the wisdom, virtue, fortune, and power, to defend them or not, concerns only themselves. The examples of great and good men, acting freely, deserve consideration; but they only perish by the ill success of their designs; and whatsoever is afterwards done by their subdued posterity, ought to have no other effect

upon the rest of the world, than to admonish them so to join in the defence of their liberties, as never to be brought under the necessity of acting by the command of one, to the prejudice of themselves, and their country. If the Roman greatness persuade us to put an extraordinary value upon what passed among them, we ought rather to examine what they did, said, or thought, when they enjoyed that liberty, which was the mother and nurse of their virtue, than what they suffered, or were forced to say, when they were fallen under that slavery which produced all manner of corruption, and made them the most base and miserable people of the world.

For what concerns us, the actions of our ancestors resemble those of the ancient rather than the later Romans: though our government be not the same with theirs in form, yet it is in principle; and if we are not degenerated, we shall rather desire to imitate the Romans in the time of their virtue, glory, and felicity, than what they were in that of their slavery, vice, shame, and misery. In the best times, when "the laws were more powerful than the commands of men," fraud was accounted a crime so detestable as not to be imputed to any but slaves; and he who had sought a power above the law under colour of interpreting it, would have been exposed to scorn or greater punishments, if any can be greater than the just scorn of the best men. And as neither the Romans, nor any people of the world, have better defended their liberties than the English nation, when any attempt has been made to oppress them by force,

they ought to be no less careful to preserve them from the more dangerous efforts of fraud and falsehood.

Our ancestors were certainly in a low condition in the time of William the First; many of their best men had perished in the civil wars, or with Harold: their valour was great, but rough, and void of skill: the Normans, by frequent expeditions into France, Italy, and Spain, had added subtlety to the boisterous violence of their native climate: William had engaged his faith, but broke it, and turned the power with which he was intrusted to the ruin of those that had trusted him. He destroyed many worthy men, carried others into Normandy, and thought himself master of all. He was crafty, bold, and elated with victory; but the resolution of a brave people was invincible. When their laws and liberties were in danger, they resolved to die, or to defend them; and made him see he could no otherwise preserve his crown and life, than by the performance of his oath, and accomplishing the ends of his election. They neither took him to be the giver nor interpreter of their laws, and would not suffer him to violate those of their ancestors. In this way they always continued; and though perhaps they might want skill to fall upon the surest and easiest means of restraining the lusts of princes, yet they maintained their rights so well, that the wisest princes seldom invaded them; and the success of those who were so foolish as to attempt it was such, as may justly deter others from following their unprosperous examples.

We have had no king, since William the First, more hardy than Henry the Eighth, and yet he so intirely acknowledged the power of making, changing, and repealing laws, to be in the Parliament, as never to attempt any extraordinary thing otherwise than by their authority. It was not he, but the Parliament, that dissolved the abbeys: he did not take their lands to himself, but received what the Parliament thought fit to give him: he did not reject the supremacy of the Pope, nor assume any other power in spiritual matters than the Parliament conferred upon him. The intricacies of his marriages, and the legitimation of his children, were settled by the same power: at least, one of his daughters could not inherit the crown upon any other title: they who gave him a power to dispose of the crown by will, might have given it to his groom; and he was too haughty to ask it from them, if he had had it in himself; which he must have had, if the laws and judicatures had been in his hand.

This is farther evinced by what passed in the Tower between Sir Thomas Moor, and Rich, the king's solicitor; who, asking if it would not be treason to oppose Richard Rich, if the Parliament should make him king; Moor said that was "*casus levis;*"* for the Parliament could make and depose kings as they thought fit; and then (as more conducing to his own case) asked Rich, if the Parliament should enact, "that God should not be God," whether

* Herbert's Henry Eighth.

such as did not submit should be esteemed traitors? It is evident, that a man of the acuteness and learning of Sir Thomas Moor would not have made use of such an argument to avoid the necessity of obeying what the Parliament had ordained, by shewing his case to be of a nature far above the power of man, unless it had been confessed by all men, that the Parliament could do whatsoever lay within the reach of human power. This may be enough to prove, that the king cannot have a power over the law; and, if he have it not, the power of interpreting laws is absurdly attributed to him, since it is founded upon a supposition that he can make them, which is false.

SECTION XXVII.

MAGNA CHARTA WAS NOT THE ORIGINAL, BUT A DECLARATION, OF THE ENGLISH LIBERTIES. THE KING'S POWER IS NOT RESTRAINED, BUT CREATED, BY THAT AND OTHER LAWS; AND THE NATION THAT MADE THEM CAN ONLY CORRECT THE DEFECTS OF THEM.

I AGREE with our author, that "*magna charta* was not made to restrain the absolute authority;" for no such thing was in being or pretended (the folly of

such visions seeming to have been reserved to complete the misfortunes and ignominy of our age) but it was to assert the native and original liberties of our nation by the confession of the king then being, that neither he nor his successors should any way encroach upon them: and it cannot be said, that the power of kings is diminished by that or any other law; for as they are kings only by law, the law may confer power upon one in particular, or upon him and his successors; but can take nothing from them, because they have nothing except what is given to them. But as that which the law gives, is given by those who make the law, they only are capable of judging whether he to whom they gave it, does well or ill employ that power, and consequently are only fit to correct the defects that may be found in it. Therefore, though I should confess, that faults may be found in many statutes, and that the whole body of them is greatly defective, it will not follow, that the compendious way of referring all to the will of the king should be taken. But what defects soever may be in our law, the disease is not so great as to require extreme remedies, and we may hope for a cheaper cure. Our law may possibly have given away too much from the people, and provided only insufficient defences of our liberties against the encroachments of bad princes; but none, who are not in judgment and honesty like to our author, can propose for a remedy to the evils that proceed from the error of giving too much, the resignation of all the rest to them. Whatever he says, it is evident, that he knows this to be true, when, though he denies,

that the power of kings can be restrained by acts of Parliament, he endeavours to take advantage of such clauses as were either fraudulently inserted by the king's officers, who, till the days of Henry the Fifth, for the most part, had the penning of the public acts, or through negligence did not fully explain the intentions of the legislators; which would be to no purpose, if all were put into the hands of the king by a general law from God, that no human power could diminish or enlarge; and, as his last shift, would obliquely put all into the power of the king, by giving him a right of interpreting the law, and judging such cases as are not clearly decided; which would be equally impertinent, if he had openly and plainly a right of determining all things according to his will.

But, what defects soever may be in any statutes, no great inconveniences could probably ensue, if that for annual parliaments was observed, as of right it ought to be. Nothing is more unlikely, than that a great assembly of eminent and chosen men should make a law evidently destructive to their own designs; and no mischief that might emerge upon the discovery of a mistake, could be so extreme, that the cure might not be deferred till the meeting of the Parliament, or at least forty days (in which time the king may call one) if that which the law has fixed seem to be too long. If he fail of this, he performs not his trust; and he that would reward such a breach of it, with a vast and uncontrollable power, may be justly thought equal in madness to our au-

thor, who, by forbidding us to examine the titles of kings, and injoining an entire veneration of the power, by what means soever obtained, encourages the worst of men to murder the best of princes, with an assurance, that, if they prosper, they shall enjoy all the honours and advantages that this world can afford.

Princes are not much more beholden to him for the haughty language he puts into their mouths, it having been observed, that the worst are always most ready to use it; and their extravagances having been often chastised by law, sufficiently proves, that their power is not derived from a higher original, than the law of their own countries.

If it were true, that the answer sometimes given by kings to bills presented for their assent, did, as our author says, amount to a denial, it could only shew, that they have a negative voice upon that which is agreed by the Parliament, and is far from a power of acting by themselves, being only a check upon the other parts of the government. But, indeed, it is more than an elusion; and he that does by art obliquely elude, confesses he has not a right absolutely to refuse. It is natural to kings, especially to the worst, to screw up their authority to the height; and nothing can more evidently prove the defect of it, than the necessity of having recourse to such pitiful evasions, when they are unwilling to do that which is required. But if I should grant, that the words import a denial, and that (notwith-

standing those of the coronation oath, "*quas vulgus elegerit*") they might deny; no more could be inferred from thence, than that they are entrusted with a power equal, in that point, to that of either house, and cannot be supreme, in our author's sense, unless there were in the same state, at the same time, three distinct, supreme, and absolute powers; which is absurd.

His cases, relating to the proceedings of the star-chamber and council-table, do only prove, that some kings have encroached upon the rights of the nation, and been suffered till their excesses growing to be extreme, they turned to the ruin of the ministers that advised them, and sometimes of the kings themselves. But the jurisdiction of the council having been regulated by the statute of the 17 Car. I. and the star-chamber more lately abolished, they are nothing to our dispute.

Such as our author, usually impute to treason and rebellion the changes that upon such occasions have ensued; but all impartial men do not only justify them, but acknowledge, that all the crowns of Europe are at this day enjoyed by no other title than such acts solemnly performed by the respective nations, who, either disliking the person that pretended to the crown (though next in blood) or the government of the present possessor, have thought fit to prefer another person or family. They also say, that as no government can be so perfect but some defect may be originally in it, or afterwards introduced, none can subsist, unless they be from time to time reduc-

ed to their first integrity, by such an exertion of the power of those for whose sake they were instituted, as may plainly shew them to be subject to no power under heaven, but may do whatever appears to be for their own good. And, as the safety of all nations consists in rightly placing and measuring this power, such have been found always to prosper, who have given it to those from whom usurpations were least to be feared; who have been least subject to be awed, cheated, or corrupted; and who, having the greatest interest in the nation, were most concerned to preserve its power, liberty, and welfare. This is the greatest trust that can be reposed in men. This power was by the Spartans given to the ephori, and the senate of twenty-eight; in Venice to that which they call "*concilio de pregadi;*" in Germany, Spain, France, Sweden, Denmark, Poland, Hungary, Bohemia, Scotland, England, and generally all the nations that have lived under the Gothic polity, it has been in their general assemblies, under the names of diets, cortez, parliaments, senates, and the like. But in what hands soever it is, the power of making, abrogating, changing, correcting, and interpreting laws, has been in the same; kings have been rejected, or deposed; the succession of the crown settled, regulated, or changed: and I defy any man to shew me one king amongst all the nations above mentioned, that has any right to the crown he wears, unless such acts are good.

If this power be not well placed, or rightly proportioned to that which is given to other magistrates,

the state must necessarily fall into great disorders, or the most violent and dangerous means must be frequently used to preserve its liberty. Sparta and Venice have rarely been put to that trouble, because the senates were so much above the kings and dukes in power, that they could without difficulty bring them to reason. The Gothic kings in Spain never ventured to dispute with the nobility; and Witza and Rodrigo exposed the kingdom as a prey to the Moors, rather by weakening it through the neglect of military discipline, joined to their own ignorance and cowardice, and by evil example bringing the youth to resemble them in lewdness and baseness, than by establishing in themselves a power above the law. But in England our ancestors, who seem to have had some such thing in their eye, as balancing the powers, by a fatal mistake placed usually so much in the hands of the king, that whensoever he happened to be bad, his extravagancies could not be repressed without great danger. And as this has in several ages cost the nation a vast proportion of generous blood, so it is the cause of our present difficulties, and threatens us with more, but can never deprive us of the rights we inherit from our fathers.

SECTION XXVIII.

THE ENGLISH NATION HAS ALWAYS BEEN GOVERNED BY ITSELF, OR ITS REPRESENTATIVES.

HAVING proved, that the people of England have never acknowledged any other human law than their own; and that our parliaments, having the power of making and abrogating laws, only can interpret them, and decide hard cases; it plainly appears there can be no truth in our author's assertion, that "the king is the author, corrector, and moderator, of both statute and common law:" and nothing can be more frivolous than what he adds, that "neither of them can be a diminution of that natural power which kings have over their people as fathers;" inasmuch as the differences between paternal and monarchical power (as he asserts it) are vast and irreconcileable in principle and practice, as I have proved at large in the former part of this work.

But, lest we should be too proud of the honour he is pleased to do to our parliaments by making use of their authority, he says, "We are first to remember, that till the conquest" (which name, for the glory of our nation, he gives to the coming in of the Normans) "there could be no parliament assembled of the general states, because we cannot learn, that until those days it was intirely united in one." Secondly,

he doubts, "Whether the Parliament, in the time of the Saxons, was composed of the nobility and clergy, or whether the Commons were also called;" but concludes, "there could be no knights of any shires, because there were no shires." Thirdly, "That Henry the First caused the Commons first to assemble knights and burgesses of their own chusing;" and would make this to be an act of grace and favour from that king: but adds, that "it had been more for the honour of parliaments, if a king whose title to the crown had been better, had been the author of the form of it."

In answer to the first, I do not think myself obliged to insist upon the name or form of the Parliament; for the authority of a magistracy proceeds not from the number of years that it has continued, but the rectitude of the institution, and the authority of those that instituted it. The power of Saul, David, and Jeroboam, was the same with that which belonged to the last kings of Israel and Judah. The authority of the Roman consuls, dictators, prætors, and tribunes, was the same as soon as it was established; was as legal and just as that of the kings of Denmark, which is said to have continued above three thousand years. For, as time can make nothing lawful or just, that is not so of itself (though men are unwilling to change that which has pleased their ancestors, unless they discover great inconveniences in it) that which a people does rightly establish for their own good, is of as much force the first day, as continuance can ever give to it; and, therefore, in mat-

ters of the greatest importance, wise and good men do not so much inquire what has been, as what is good, and ought to be; for that which of itself is evil, by continuance is made worse, and upon the first opportunity is justly to be abolished. But if that liberty in which God created man, can receive any strength from continuance, and the rights of Englishmen can be rendered more unquestionable by prescription, I say that the nations whose rights we inherit, have ever enjoyed the liberties we claim, and always exercised them in governing themselves popularly, or by such representatives as have been instituted by themselves, from the time they were first known in the world.

The Britons and Saxons lay so long hid in the obscurity that accompanies barbarism, that it is in vain to seek what was done by either in any writers more ancient than Cæsar and Tacitus. The first describes the Britons to have been a fierce people, zealous for liberty, and so obstinately valiant in the defence of it, that though they wanted skill, and were overpowered by the Romans, their country could no otherwise be subdued, than by the slaughter of all the inhabitants that were able to bear arms. He calls them a free people inasmuch as they were not, like the Gauls, governed by laws made by the great men, but by the people. In his time they chose Cassivellaunus, and afterwards Caractatus, Arviragus, Galgacus, and others, to command them in their wars, but they retained the government in themselves. That no force might be put upon them, they met armed in their general

assemblies; and though the smaller matters were left to the determination of the chief men, chosen by themselves for that purpose, they reserved the most important (amongst which the chusing of those men was one) to themselves. When the Romans had brought them low, *they set up certain kings to govern such as were within their territories; but those who defended themselves by the natural strength of their situation, or retired into the North, or the islands, were still governed by their own customs, and were never acquainted with domestic or foreign slavery. The Saxons, from whom we chiefly derive our original and manners, were no less lovers of liberty, and better understood the ways of defending it. They were certainly the most powerful and valiant people of Germany: and what the Germans performed under Ariovistus, Arminius, and Maroboduus, shews both their force and their temper. If ever fear entered into the heart of Cæsar, it seems to have been when he had to deal with Ariovistus. The advantages that the brave Germanicus obtained against Arminius, were at least thought equal to the greatest victories that had been gained by any Roman captain, because these nations fought not for riches, nor any instruments of luxury and pleasure, which they despised, but for liberty. This was the principle in which they lived, as appears by their words and actions; so that Arminius, when his brother

* Inter instrumenta servituti reges habuere.
C. TACIT. Agric. vit. c. 14.

Flavius, who served the Romans, boasted of the increase of his pay, and the marks of honour he had received, in scorn called them the *"rewards of the vilest servitude;" but when he himself endeavoured to usurp a power over the liberty of his country, which he had so bravely defended, he was killed by those he would have oppressed. Tacitus, farther describing the nature of the Germans, shews that the Romans had run greater hazards from them, than from the Samnites, Carthaginians, and Parthians; and attributes their bravery to the liberty† they enjoyed; for they are, says he, neither‡ exhausted by tributes, nor vexed by publicans; and, lest this liberty should be violated, § "the chief men consult about things of lesser moment: but the most important matters are determined by all." Whoever would know the opinion of that wise author concerning the German liberty, may read his excellent treatise concerning their manners and customs; but I presume this may be enough to prove, that they lived free under such magistrates as they chose, regulated by such laws as they made, and retained the principal powers of the government in their general or particular councils. Their kings and princes had no other power than

* Vilis servitii præmia. TACIT. ann. l. ii. 9.

† Quippe gravior est Arsacis regno Germanorum libertas. TAC. mor. Germ. c. 37.

‡ Exempti oncribus & collationibus, & tantum in usum præliorum sepositi, velut tela & arma bellis reservantur.

§ De minoribus principes consultant, de majoribus omnes. C. TACIT. de mor. Germ.

was conferred upon them by these * assemblies, who having all in themselves, could receive nothing from them, who had nothing to give.

It is easily proved, that the Saxons or Angli, from whom we descend, were eminent among those, whose power, virtue, and love to liberty, the above-mentioned historian so highly extols, inasmuch as, besides what he says in general of the Saxons, he names the Angli; describes their habitation near the Elbe, and their religious worship of the goddess Erthum, or the Earth, celebrated in an island lying in the mouth of that river, thought to be Heyligland; in resemblance of which a small one lying over-against Berwick, is called Holy Island. If they were free in their own country, they must be so when they came hither. The manner of their coming shews they were more likely to impose, than submit to, slavery; and if they had not the name of Parliament, it was because they did not speak French; or, not being yet joined with the Normans, they had not thought fit to put their affairs into that method: but, having the root of power and liberty in themselves, they could not but have a right of establishing the one in such form as best pleased them, for the preservation of the other.

* Ut turbæ placuit, confidunt armati: silentium per sacerdotes, quibus tum coercendi jus est, imperatur. Mox rex vel princeps, prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia est, audiuntur, autoritate suadendi, magis quam jubendi potestate. Si displicuit sententia, fremitu aspernantur; si placuit, frameas concutiunt, &c.

C. TACIT. de mor. Germ.

This being, as I suppose, undeniable, it imports not whether the assemblies, in which the supreme power of each nation did reside, were frequent or rare; composed of many or few persons; sitting all together in one place, or in more; what name they had: or whether every free man did meet and vote in his own person, or a few were delegated by many. For they who have a right inherent in themselves, may resign it to others; and they who can give a power to others, may exercise it themselves, unless they recede from it by their own act; for it is only a matter of convenience, of which they alone can be the judges, because it is for themselves only that they judge. If this were not so, it would be very prejudicial to kings; for it is certain, that Cassivellaunus, Caractatus, Arviragus, Galgacus, Hengist, Horsa, and others amongst the Britons and Saxons, what name soever may have been abusively given to them, were only temporary magistrates chosen upon occasion of present wars; but we know of no time in which the Britons had not their great council to determine their most important affairs; and the Saxons in their own country had their own councils, where all were present, and in which Tacitus assures us they dispatched their greatest business. These were the same with the micklegemots which they afterwards held here, and might have been called by the same name, if Tacitus had spoken Dutch.

If a people, therefore, have not a power to create at any time a magistracy which they had not before, none could be created at all; for no magistracy is

eternal: and if, for the validity of the constitution, it be necessary that the beginning must be unknown, or that no other could have been before it, the monarchy amongst us cannot be established upon any right; for, though our ancestors had their councils and magistrates, as well here as in Germany, they had no monarchs. This appears plainly by the testimonies of Cæsar and Tacitus; and our later histories shew, that as soon as the Saxons came into this country, they had their micklegemots, which were general assemblies of the noble and free-men, who had in themselves the power of the nation: and though, when they increased in numbers, they erected seven kingdoms, yet every one retained the same usage within itself. These assemblies were evidently the same in power with our parliaments; and though they differed in name or form, it matters not; for they who could act in the one, could not but have a power of instituting the other; that is, the same people that could meet together in their own persons, and according to their own pleasure order all matters relating to themselves, whilst three or four countries only were under one government, and their numbers were not so great, nor their habitations so far distant, that they might not meet altogether without inconvenience, with the same right might depute others to represent them, when, being joined in one, no place was capable of receiving so great a multitude, and that the frontiers would have been exposed to the danger of foreign invasions, if any such thing had been practised.

But if the authority of parliaments, for many ages representing the whole nation, were less to be valued (as our author insinuates) because they could not represent the whole, when it was not joined in one body, that of kings must come to nothing; for there could be no one king over all, when the nation was divided into seven distinct governments: and it is most absurd to think, that the nation which had seven great councils, or micklegemots, at the same time they had seven kingdoms, could not as well unite the seven councils as the seven kingdoms into one. It is to as little purpose to say, that the nation did not unite itself, but the several parcels came to be inherited by one; for that one could inherit no more from the others than what they had; and the seven being only magistrates set up by the micklegemots, &c. the one must be so also. And it is neither reasonable to imagine, nor possible to prove, that a fierce nation, jealous of liberty, and who had obstinately defended it in Germany against all invaders, should conquer this country to enslave themselves, and purchase nothing by their valour but that servitude which they abhorred; or be less free when they were united into one state, than they had been when they were divided into seven; and least of all, that one man could first subdue his own people, and then all the rest, when by endeavouring to subdue his own, he had broken the trust reposed in him, and lost the right conferred upon him, and without them had not power to subdue any. But, as it is my fate almost ever to dissent from our author, I affirm,

that the variety of government, which is observed to have been amongst the Saxons, who in some ages were divided, in others united; sometimes under captains, in other times under kings; sometimes meeting personally in the micklegemots, sometimes by their delegates in the wittenagemots; does evidently testify, that they ordered all things according to their own pleasure; which being the utmost act of liberty, it remained inviolable under all those changes, as we have already proved by the confession of Offa, Ina, Alfred, Canutus, Edward, and other particular, as well as universal, kings; and we may be sure those of the Norman race can have no more power, since they came in by the same way, and swore to govern by the same laws.

2. I am no way concerned in our author's doubt, "whether parliaments did, in those days, consist of nobility and clergy; or whether the commons were also called." For if it were true, as he asserts, that according to the eternal law of God and nature, there can be no government in the world but that of an absolute monarch, whose sovereign majesty can be diminished by no law or custom, there could be no parliaments, nor other magistracies, that did not derive their power and being from his will. But having proved, that the Saxons had their general councils and assemblies, when they had no kings; that by them kings were made, and the greatest affairs determined, whether they had kings or not; it can be of no importance, whether in one or more ages the commons had a part in the government, or not. For the

same power that instituted a parliament without them, might, when they thought fit, receive them into it: or rather, if they who had the government in their hands, did, for reasons known to themselves, recede from the exercise of it, they might resume it when they pleased.

Nevertheless it may be worth our pains to enquire, what our author means by nobility. If such, as at this day, by means of patents obtained for money, or by favour, without any regard to merit in the persons, or their ancestors, are called dukes, marquises, &c. I give him leave to impute as late and base an original to them as he pleases, without fearing, that the rights of our nation can thereby be impaired; and am content, that if the king do not think fit to support the dignity of his own creatures, they may fall to the ground. But if by noblemen we are to understand such as have been ennobled by the virtues of their ancestors, manifested in services done to their country, I say, that all nations, among whom virtue has been esteemed, have had a great regard to them and their posterity; and though kings, when they were made, have been entrusted by the Saxons, and other nations, with a power of ennobling those, who, by services rendered to their country, might deserve that honour; yet the body of the nobility was more ancient than such; for it had been equally impossible to take * kings (according to Tacitus) out of the no-

* Reges ex nobilitate, duces ex virtute sumere.
TACITUS mor. Germ. c. 7.

bility, if there had been no nobility, as to take captains for their virtue, if there had been no virtue; and princes could not, without breach of that trust, confer honours upon those that did not deserve them; which is so true, that this practice was objected as the greatest crime against* Vortigern, the last and the worst of the British kings: and though he might pretend (according to such cavils as are usual in our time) that the judgment of those matters was referred to him; yet the world judged of his crimes, and when he had rendered himself odious to God and men by them, he perished in them, and brought destruction upon his country, that had suffered them too long.

As among the Turks, and most of the eastern tyrannies, there is no nobility, and no man has any considerable advantage above the common people, unless by the immediate favour of the prince; so in all the legal kingdoms of the north, the strength of the government has always been placed in the nobility; and no better defence has been found against the encroachments of ill kings, than by setting up an order of men, who, by holding large territories, and having great numbers of tenants and dependants,

* Sublimato eo cœpit lues omnium scelerum crescere: sæviebat scurrilis nequitia, odium veritatis, &c. ut vas omnium scelerum solus videretur Vortigernus; & quod maxime regiæ honestati contrarium est, nobiles deprimens, & moribus & sanguine ignobiles extollens, Deo & hominibus efficitur odiusos.

MAT. WESTM. Ann. 446.

might be able to restrain the exorbitances, that either the kings, or the commons, might run into. For this end Spain, Germany, France, Poland, Denmark, Sweden, Scotland, and England, were almost wholly divided into lordships under several names, by which every particular possessor owed allegiance (that is such an obedience as the law requires) to the king, and he reciprocally swore to perform that which the same law exacted from him.

When these nations were converted to the christian religion, they had a great veneration for the clergy; and, not doubting that the men whom they esteemed holy, would be just, thought their liberties could not be better secured, than by joining those who had the direction of their consciences, to the noblemen who had the command of their forces. This succeeded so well (in relation to the defence of the public rights) that in all the forementioned states, the bishops, abbots, &c. were no less zealous or bold in defending the public liberty, than the best and greatest of the lords; and if it were true, that things being thus established, the commons did neither personally, nor by their representatives, enter into the general assemblies, it could be of no advantage to kings; for such a power as is above-mentioned, is equally inconsistent with the absolute sovereignty of kings, if placed in the nobility and clergy, as if the commons had a part. If the king has all, no other man, nor number of men, can have any. If the nobility and clergy have the power, the commons may have their share also. But I affirm, that those whom we now call

commons, have always had a part in the government, and their place in the councils that managed it; for if there was a distinction, it must have been by patent, birth, or tenure.

As for patents, we know they began long after the coming of the Normans, and those that now have them cannot pretend to any advantage on account of birth or tenure, beyond many of those who have them not. Nay, besides the several branches of the families that now enjoy the most ancient honours, which consequently are as noble as they, and some of them of the elder houses, we know many that are now called commoners, who, in antiquity and eminency are no way inferior to the chief of the titular nobility: and nothing can be more absurd, than to give a prerogative of birth to Craven, Tufton, Hyde, Bennet, Osborn, and others, before the Cliftons, Hampdens, Courtneys, Pelhams, St. Johns, Baintons, Wilbrahams, Hungerfords, and many others. And if the tenures of their estates be considered, they have the same, and as ancient as any of those who go under the names of duke, or marquis. I forbear to mention the sordid ways of attaining to titles in our days; but whoever will take the pains to examine them, shall find, that they rather defile than ennoble the possessors. And whereas men are truly ennobled only by virtue, and respect is due to such as are descended from those who have bravely served their country, because it is presumed (till they shew the contrary) that they will resemble their ancestors, these modern courtiers, by their names

and titles, frequently oblige us to call to mind such things as are not to be mentioned without blushing. Whatever the ancient noblemen of England were, we are sure they were not such as these. And though it should be confessed, that no others than dukes, marquises, earls, viscounts, and barons, had their places in the councils mentioned by Cæsar and Tacitus, or in the great assemblies of the Saxons, it could be of no advantage to such as now are called by those names. They were the titles of offices conferred upon those, who did and could best conduct the people in time of war, give counsel to the king, administer justice, and perform other public duties; but were never made hereditary except by abuse; much less were they sold for money, or given as recompences of the vilest services. If the ancient order be totally inverted, and the ends of its institution preverted, they who from thence pretend to be distinguished from other men, must build their claim upon something very different from antiquity.

This being sufficient (if I mistake not) to make it appear, that the ancient councils of our nation did not consist of such as we now call noblemen, it may be worth our pains to examine, of what sort of men they did consist: and though I cannot much rely upon the credit of Camden, which he has forfeited by a great number of untruths, I will begin with him, because he is cited by our author. If we will believe him, "*that which the Saxons call witten-

* Quod Saxones olim wittenagemot, parliamentum & panan-glicum recte dici possit, summamque & sacrosanctam habet

agemot, we may justly name parliament, which has the supreme and most sacred authority of making, abrogating, and interpreting laws, and generally of all things relating to the safety of the commonwealth." This wittenagemot was, according to William of Malmsbury, "*the general meeting of the senate and people;" and Sir Harry Spelman calls it, "†the general council of the clergy and people." In the assembly at Calcuth it was decreed by the archbishops, bishops, abbots, dukes, senators, and the people of the land "*(populo terræ)*" that "‡the kings should be elected by the priests and elders of the people." By these Offa, Ina, and others, were made kings; and Alfred, in his will, acknowledged his § crown from them. Edgar was elected by all the people, and not long after deposed by them, and again restored in a ‖ general assembly. These things being sometimes said to be done by the assent of the barons of the kingdom, Camden

auctoritatem in legibus ferendis, antiquandis, conformandis, interpretandis, & in omnibus quæ ad reipublicæ salutem spectant. BRIT. fol. 63.

* Generalis senatus & populi conventus. MALMS.

† Commune concilium tam cleri quam populi. SPELM.

‡ Ut reges à sacerdotibus & senioribus populi eligantur.

§ Quam Deus & principes cum senioribus populi misericorditer & benigne dederunt.

‖ Coram omni multitudine populi Anglorum.

says, that "under the name of the * baronage, all the orders of the kingdom are in a manner comprehended;" and it cannot be otherwise understood, if we consider, that those called noblemen, or the nobility of England, are often, by the historians, said to be "*(infinita multitudo)*" an infinite multitude.

If any man ask how the nobility came to be so numerous; I answer, that the northern nations, who were perpetually in arms, put a high esteem upon military valour; sought by conquest to acquire better countries than their own; valued themselves according to the numbers of men they could bring into the field; and, to distinguish them from villains, called those noblemen, who nobly defended and enlarged their dominions by war; and for a reward of their services; in the division of lands gained by conquest, they distributed to them freeholds, under the obligation of continuing the same service to their country. This appears by the name of knights' service, a knight being no more than a soldier, and a knight's fee no more than was sufficient to maintain one. It is plain, that knighthood was always esteemed nobility; so that no man, of what quality soever; thought a knight inferior to him, and those of the highest birth could not act as noblemen till they were knighted. Among the Goths in Spain, the cutting off the hair (which being long, was the mark of knighthood) was accounted a degrading, and looked upon to be so great a mark of infamy,

* Nomine baronagii omnes quodam modo regni ordines continentur. CAMD.

that he who had suffered it, could never bear any honour or office in the commonwealth; and there was no dignity so high, but every knight was capable of it. There was no distinction of men above it, and even to this day "baron," or "varon," in their language signifies no more than "*vir*" in Latin, which is not properly given to any man unless he be free. The like was in France, till the coming in of the third race of kings, in which time the twelve peers (of whom six only were laymen) were raised to a higher dignity, and the commands annexed made hereditary; but the honour of knighthood was thereby no way diminished. Though there were dukes, earls, marquises, and barons, in the time of Froissart, yet he usually calls them knights, and Philip de Commines, speaking of the most eminent men of his time, calls them good, wise, or valiant knights. Even to this day, the name of gentleman comprehends all that is raised above the common people; Henry the Fourth usually called himself the first gentleman in France; and it is an ordinary phrase among them, when they speak of a gentleman of good birth, to say, "*Il est noble comme le roy;* he is as noble as the king." In their general assembly of estates, "the chamber of of the noblesse," which is one of three, is composed of the deputies sent by the gentry of every province; and in the enquiry, made about the year 1668, concerning nobility, no notice was taken of such as had assumed the titles of earl, marquis, viscount, or baron, but only of those who called themselves gentlemen; and if they could prove that name to belong to them, they were left to use

the other titles as they pleased. When duels were in fashion (as all know they were lately) no man except the princes of the blood, and marechals of France, could with honour refuse a challenge from any gentleman: the first, because it was thought unfit, that he who might be king, should fight with a subject, to the danger of the commonwealth, which might by that means be deprived of its head: the others being by their office commanders of the nobility, and judges of all the controversies relating to honour, that happened amongst them, cannot reasonably be brought into private contests with any. In Denmark, nobleman and gentleman is the same thing; and till the year 1660, they had the principal part of the government in their hand. When Charles Gustavus, king of Sweden, invaded Poland in the year 1655, it is said, that there were above three hundred thousand gentlemen in arms to resist him. This is the nobility of that country: kings are chosen by them: every one of them will say, as in France, "he is noble as the king." The last king was a private man among them, not thought to have had more than four hundred pounds a year. He who now reigns was not at all above him in birth or estate, till he had raised himself by great services done for his country in many wars; and there was not one gentleman in the nation who might not have been chosen as well as he, if it had pleased the assembly that did it.

This being the nobility of the northern nations, and the true baronage of England, it is no wonder

that they were called "*nobile*;" the most eminent among them "*magnates principes, proceres*;" and so numerous, that they were esteemed to be "*multitudo infinita.*" One place was hardly able to contain them; and the inconveniences of calling them all together appeared to be so great, that they in time chose rather to meet by representatives, than every one in his own person. The power, therefore, remaining in them, it matters not what method they observed in the execution. They who had the substance in their hands, might give it what form they pleased. Our author sufficiently manifests his ignorance, in saying, there could be no knights of the shires in the time of the Saxons, because there were no shires; for the very word is Saxon, and we find the names of Berkshire, Wiltshire, Devonshire, Dorsetshire, and others, most frequently in the writings of those times; and dukes, earls, thanes, or aldermen, appointed to command the forces, and look to the distribution of justice in them.* Selden cites Ingulphus for saying, that "Alfred was the first that changed the provinces, &c. into counties:" but refutes him, and proves, that the distinction of the land into shires or counties (for shire signified no more than the share or part committed to the care of the earl or comes) was far more ancient. Whether the first divisions by the Saxons were greater or less than the shires or counties now are, is nothing to the question; they who made them to be as they were,

* Selden's tit. of hon. p. 2 c. 5.

could have made them greater or less, as they pleased. And whether they did immediately, or some ages after that distinction, cease to come to their great assemblies, and rather chose to send their deputies; or whether such deputies were chosen by counties, cities, and boroughs, as in our days, or in any other manner; can be of no advantage or prejudice to the cause that I maintain. If the power of the nation, when it was divided into seven kingdoms, or united under one, did reside in the micklegemots or wittenagemots; if these consisted of the nobility and people, who were sometimes so numerous, that no one place could well contain them; and if the preference given to the chief among them, was on account of the offices they executed, either in relation to war or justice, which no man can deny; I have as much as serves my purpose. It is indifferent to me, whether they were called earls, dukes, aldermen, herotoghs, or thanes, for it is certain, that the titular nobility, now in mode amongst us, has no resemblance to this ancient nobility of England. The novelty, therefore, is on the other side, and that of the worst sort; because by giving the name of noblemen (which anciently belonged to such as had the greatest interests in nations, and were the supporters of their liberty) to court creatures, who often have none, and either acquire their honours by money, or are preferred for servile, and sometimes impure, services rendered to the person that reigns, or else for mischiefs done to their country, the constitution has been wholly inverted, and the trust reposed in the kings (who in some measure had the disposal of offi-

ces and honours) misemployed. This is farther aggravated by appropriating the name of noblemen solely to them: whereas the nation having been anciently divided only into freemen or noblemen (who were the same) and villians; the first were, as Tacitus says of their ancestors the Germans, *"exempted from burdens and contributions, and reserved like arms for the use of war," whilst the others were little better than slaves, appointed to cultivate the lands, or to other servile offices. And I leave any reasonable man to judge, whether the latter condition be that of those we now call commoners. Nevertheless, he that will believe the title of nobleman still to belong to those only who are so by patent, may guess how well our wars would be managed, if they were left solely to such as are so by that title. If this be approved, his majesty may do well with his hundred and fifty noblemen, eminent in valour and military experience as they are known to be, to make such wars as may fall upon him, and leave the despised commons, under the name of villains, to provide for themselves, if the success do not answer his expectations. But if the commons are as free as the nobles, many of them in birth equal to the patentees, in estate superior to most of them; and that it is not only expected they should assist him in wars with their persons and purses, but acknowledged by all, that the strength and virtue of the nation is in them; it must be confessed, that they are true noble-

* Exempti oneribus & collationibus, & tantum in usum præliorum repositi, veluti tela & arma bellis reservantur.

CORN. TACIT. de morib. Germ.

men of England, and that all the privileges, anciently enjoyed by such, must necessarily belong to them, since they perform the offices to which they were annexed. This shews how the nobility were justly said to be almost infinite in number, so that no one place was able to contain them. The Saxon armies, that came over into this country to a wholesome and generative climate, might well increase in four or five ages to those vast numbers, as the Franks, Goths, and others, had done in Spain, France, Italy, and other parts: and when they were grown so numerous, they found themselves necessarily obliged to put the power into the hands of representatives, chosen by themselves, which they had before exercised in their own persons. But these two ways differing rather in form than essentially, the one tending to democracy, the other to aristocracy, they were equally opposite to the absolute dominion of one man reigning for himself, and governing the nation as his patrimony; and equally assert the rights of the people to put the government into such a form as best pleases themselves. This was suitable to what they had practised in their own country: "*Demino-ribus consultant principes, de majoribus omnes.*"* Nay, even these "smaller matters" cannot be said properly to relate to the king; for he is but one, and the word "*principes*" is in the plural number, and can signify such principal men, as the same author says, were chosen by the general assemblies to do justice, &c. and to each of them one hundred com-

* Tacit. de mor. Germ.

ites joined, not only to give advice, but authority to their actions.

The word "*omnes*," spoken by a Roman, must likewise be understood as it was used by them, and imports all the citizens, or such as made up the body of the commonwealth. If he had spoken of Rome or Athens whilst they remained free, he must have used the same word (because all those, of whom the city consisted, had votes) how great soever the number of slaves or strangers might have been. The Spartans are rightly said to have gained, lost, and recovered, the lordship or principality of Greece. They were all lords in relation to their helots, and so were the Dorians in relation to that sort of men, which under several names they kept, as the Saxons did their villains, for the performance of the offices which they thought too mean for those, who were ennobled by liberty, and the use of arms, by which the commonwealth was defended and enlarged.... Though the Romans scorned to give the title of lord to those, who had usurped a power over their lives and fortunes, yet every one of them was a lord in relation to his own servants, and altogether are often called "*lords of the world:" the like is seen almost every where. The government of Venice, having continued for many ages in the same families, has ennobled them all. No phrase is more common in Switzerland, than "the lords of Bern," or "the lords of Zurich," and other places, though perhaps

* Romanos rerum dominos. VIRG.

there is not a man amongst them who pretends to be a gentleman, according to the modern sense put upon that word. The states of the United Provinces are called high and mighty lords, and the same title is given to each of them in particular. Nay, the word heer, which signifies lord both in high and low Dutch, is as common as monsieur in France, signor in Italy, or sennor in Spain; and is given to every one, who is not of a sordid condition, but especially to soldiers: and though a common soldier be now a much meaner thing than it was anciently, no man speaking to a company of soldiers in Italian, uses any other style than "*signori soldati;*" and the like is done in other languages. It is not, therefore, to be thought strange if the Saxons, who in their own country had scorned any other employment than that of the sword, should think themselves farther ennobled, when by their arms they had acquired a great and rich country, and driven out, or subdued, the former inhabitants. They might well distinguish themselves from the villains they brought with them, or the Britons they had enslaved. They might well be called "*magnates, procéres regni, nobiles, Angliæ nobilitas, barones;*" and the assemblies of them justly called "*concilium regni generale, universitas totius Angliæ nobilium, universitas baronagii,*" according to the variety of times, and other occurrences. We have such footsteps remaining of the name of baron, as plainly shew the signification of it. The barons of London and the Cinque Ports are known to be only the freemen of those places. In the petty court-barons, every man who may be of

a jury is a baron. These are noblemen; for there are noble nations, as well as noble men in nations. The Mammalukes accounted themselves to be all noble, though born slaves; and when they had ennobled themselves by the use of arms, they looked upon the noblest of the Egyptians as their slaves. Tertullian, writing, not to some eminent men, but to the whole people of Carthage, calls them "*antiquitate nobiles, nobilitate felices.*" Such were the Saxons, ennobled by a perpetual application to those exercises that belong to noblemen, and an abhorrence to any thing that is vile and sordid.

Lest this should seem far fetched, to those who please themselves with cavilling, they are to know, that the same general councils are expressed, by other authors, in other words. They are called, * "The general council of the bishops, noblemen, counts, all the wise men, elders and people of the whole kingdom," in the time of Ina. In that of Edward the elder, † "The great council of the bishops, abbots, noblemen, and people." William of Malmsbury calls them, ‡ "The general senate and assembly of the people." Sometimes they are, in short, called "clergy and people;" but all ex-

* Commune concilium episcoporum, procerum, comitum, & omnium sapientum, seniorum & populorum totius regni.
BEB. Eccl. hist.

† Magnum concilium episcoporum, abbatum, fidelium, precerum, & populorum.

‡ Senetum generalem & populi conventum.

press the same power, neither received from, nor limitable by, kings; who are always said to be chosen, or made, and sometimes deposed, by them. William the Norman found and left the nation in this condition; Henry the Second, John, and Henry the Third, who had nothing but what was conferred upon them by the same clergy and people, did so too. *Magna charta* could give nothing to the people, who, in themselves, had all; and only reduced into a small volume, the rights which the nation was resolved to maintain; brought the king to confess, they were perpetually inherent, and time out of mind enjoyed, and to swear that he would no way violate them: if he did, he was, "*ipso facto*," excommunicated; and, being thereby declared to be an execrable, perjured person, they knew how to deal with him. This act has been confirmed by thirty parliaments; and the proceedings with kings, who have violated their oaths, as well before as after the time of Henry the Third, which have been already mentioned, are sufficient to shew, that England has always been governed by itself, and never acknowledged any other lord than such as it thought fit to set up

SECTION XXIX.

THE KING WAS NEVER MASTER OF THE SOIL.

THOSE who, without regard to truth, resolve to insist upon such points, as they think may serve their designs, when they find it cannot be denied, that the powers before-mentioned have been exercised by the English, and other nations, say, that they were the concessions of kings, who, being masters of the soil, might bestow parcels upon some persons, with such conditions as they pleased, retaining to themselves the supreme dominion of the whole; and, having already, as they think, made them fountains of honour, they proceed to make them also the fountains of property; and, for proof of this, alledge, that all lands, though held of mean lords, do, by their tenures, at last result upon the king, as the head from whom they are enjoyed. This might be of force, if it were true: but matters of the highest importance requiring a most evident proof, we are to examine, first, if it be possible; and in the next place, if it be true.

1. For the first; no man can give what he has not. Whoever, therefore, will pretend, that the king has bestowed this property, must prove, that he had it in himself. I confess that the kings of Spain and

Portugal obtained from the Pope grants of the territories they possessed in the West-Indies; and this might be of some strength, if the Pope, as vicar of Christ, had an absolute dominion over the whole earth; but if that fail, the whole falls to the ground, and he is ridiculously liberal of that which no way belongs to him. My business is not to dispute that point; but, before it can have any influence upon our affairs, our kings are to prove, that they are lords of England upon the same title, or some other equivalent to it. When that is done, we shall know upon whom they have a dependance, and may at leisure consider, whether we ought to acknowledge, and submit to, such a power, or give reasons for our refusal. But, there being no such thing in our present case, their property must be grounded upon something else, or, we may justly conclude they have none.

In order to this, it is hardly worth the pains to search into the obscure remains of the British histories: for when the Romans deserted our island, they did not confer the right they had (whether more or less) upon any man, but left the enjoyment of it to the poor remainders of the nation, and their own established colonies, who were grown to be one people with the natives. The Saxons came under the conduct of Hengist and Horsa, who seem to have been sturdy pirates; but did not (that I can learn) bear any characters in their persons, of the so much admired sovereign majesty, that should give them an absolute dominion or propriety, either in their own country, or any other they should set their feet upon.

They came with about a hundred men; and, chusing rather to serve Vortigern, than to depend upon what they could get by rapine at sea, lived upon a small proportion of land, by him allotted to them.* Though this seems to be but a slender encouragement, yet it was enough to invite many others to follow their example and fortune; so that their number increasing, the county of Kent was given to them, under the obligation of serving the Britons in their wars. Not long after, lands in Northumberland were bestowed upon another company of them, with the same condition. This was all the title they had to what they enjoyed, till they treacherously killed four hundred and sixty, or, as William of Malmsbury says, three hundred principal men of the British nobility, and made Vortigern prisoner,† who had been so much their benefactor, that he seems never to have deserved well, but from them, and to have incensed the Britons by the favour he shewed them, as much as by the worst of his vices. And, certainly, actions of this kind, composed of falsehood and cruelty, can never create a right, in the opinion of any better men than Filmer and his disciples, who think that the power only is to be regarded, and not the means, by which it is obtained. But, though it should be granted, that a right had been thus acquired, it must accrue to the nation, not to Hengist and Horsa. If such an acquisition be called a conquest, the benefit must belong to those that conquered. This was not the work of two men; and those who had been free at home, can never be

* Mat. West. Flor. hist † Ibid.

thought to have left their own country, to fight as slaves, for the glory and profit of two men, in another. It cannot be said, that their wants compelled them; for their leaders suffered the same, and could not be relieved, but by their assistance; and whether their enterprize was good or bad, just or unjust, it was the same to all: no one man could have any right, peculiar to himself, unless they who gained it did confer it upon him: and it is no way probable, that they, who, in their own country, had kept their princes within very narrow limits, as has been proved, should resign themselves, and all they had, as soon as they came hither. But we have already shewn, that they always continued most obstinate defenders of their liberty, and the government to which they had been accustomed; that they managed it by themselves, and acknowledged no other laws than their own. Nay, if they had made such a resignation of their right, as was necessary to create one in their leaders, it would be enough to overthrow the proposition; for it is not then the leader that gives to the people, but the people to the leader. If the people had not a right to give what they did give, none was conferred upon the receiver; if they had a right, he that should pretend to derive a benefit from thence, must prove the grant, that the nature and intention of it may appear.

To the second; if it be said, that records testify all grants to have been originally from the king; I answer, that though it were confessed (which I absolutely deny, and affirm that our rights and liberties

are innate, inherent, and enjoyed time out of mind, before we had kings) it could be nothing to the question, which is, concerning reason and justice; and, if they are wanting, the defect can never be supplied by any matter of fact, though never so clearly proved. Or, if a right be pretended to be grounded upon a matter of fact, the thing to be proved is, that the people did really confer such a right upon the first, or some other, king: and, if no such thing do appear, the proceedings of one or more kings, as if they had it, can be of no other value. But in the present case, no such grant is pretended to have been made, either to the first, or to any of the following kings; the right they had not, their successors could not inherit, and consequently cannot have it, or, at most, no better title to it than that of usurpation.

But, as they who inquire for truth, ought not to deny or conceal any thing, I may grant that manors, &c. were enjoyed by tenure from kings; but that will no way prejudice the cause I defend, nor signify more, than that the countries which the Saxons had acquired, were to be divided among them; and, to avoid the quarrels that might arise, if every man took upon him to seize what he could, a certain method of making the distribution was necessarily to be fixed; and it was fit, that every man should have something in his own hands, to justify his title to what he possessed, according to which controversies should be determined. This must be testified by somebody, and no man could be so fit, or of so much credit, as he who was chief among them; and this is

no more than is usual in all the societies of the world. The mayor of every corporation, the speaker or clerk of the house of peers, or house of commons, the first president of every Parliament, or presidial in France; the consul, burgermaster, advoyer, or bailiff, in every free town of Holland, Germany, or Switzerland; signs the public acts, that pass in those places. The dukes of Venice and Genoa, do the like, though they have no other power, than what is conferred upon them, and, of themselves, can do little or nothing. The grants of our kings are of the same nature, though the words "*mero motu nostro*" seem to imply the contrary; for kings speak always in the plural number, to shew that they do not act for themselves, but for the societies over which they are placed; and all the veneration that is, or can be, given to their acts, does not exalt them, but those from whom their authority is derived, and for whom they are to execute. The tyrant of the East, and other barbarians, whose power is most absolute, speak in the single number, as appears by the decrees of Nabuchodonosor, Cyrus, Darius, and Ahasuerus, recited in scripture, with others, that we hear of daily from those parts: but, wheresoever there is any thing of civilty or regularity in government, the prince uses the plural, to shew that he acts in a public capacity. From hence, says Grotius, the rights of kings to send ambassadors, make leagues, &c. do arise:* the confederacies made by them do not terminate with their lives, because they are not for

* De jur. bell.

themselves; they speak not in their own persons, but as representing their people: and *"a king who is deprived of his kingdom, loses the right of sending ambassadors," because he can no longer speak for those, who, by their own consent, or by a foreign force, are cut off from him. The question is, not whether such a one be justly or unjustly deprived (for that concerns only those who did it, or suffer it) but whether he can oblige the people; and it is ridiculous for any nation to treat with a man that cannot perform what shall be agreed, or for him to stipulate that which can oblige, and will be made good, only by himself.

But, though much may be left to the discretion of kings, in the distribution of lands, and the like, yet it no way diminishes the right of the people, nor confers any upon them, otherwise to dispose of what belongs to the public, than may tend to the common good, and the accomplishment of those ends, for which they are entrusted. Nay, if it were true, that a conquered country did belong to the crown, the king could not dispose of it, because it is annexed to the office, and not alienable by the person. This is not only found in regular mixed monarchies (as in Sweden, where the grants made by the last kings have been lately rescinded by the general assembly of estates, as contrary to law) but even in the most absolute, as in France, where the present king, who has stretched his power to the utmost,

* Rex regno exutus, jus legandi amittit. GROT.

has lately acknowledged, that he cannot do it; and, according to the known maxim of the state, that the demesnes of the crown, which are designed for the defraying of public charges, cannot be alienated, all the grants made within the last fifteen years have been annulled; even those who had bought lands of the crown have been called to account, and the sums given, being compared with the profits received, and a moderate interest allowed to the purchasers, so much of the principal as remained due to them has been repaid, and the lands resumed.

SECTION XXX.

HENRY THE FIRST WAS KING OF ENGLAND BY AS GOOD A TITLE AS ANY OF HIS PREDECESSORS OR SUCCESSORS.

HAVING made it appear, as I suppose, that the ancient nobility of England was composed of such men as had been ennobled by bearing arms in the defence or enlargement of the commonwealth; that the dukes, earls, &c. were those who commanded them; that they and their dependants received lands for such services, under an obligation of continuing to render the like, and according to their several degrees and proportions, to provide and maintain

horses, arms, and men, for the same uses; it cannot be denied, that they were such gentlemen, and lords of manors, as we now call commoners, together with the freeholders, and such as in war were found most able to be their leaders. Of these the micklegemots, wittenagemots, and other public assemblies, did consist; and nothing can be more absurd than to assign the names and rights of duke, earl, and viscount, which were names of offices, to those who have not the offices, and are no way fit for them. If our author, therefore, had said, that such as these, who had always composed the great councils of our nation, had, in favour of Henry the First, bestowed the crown upon him, as they had done upon his father and brother, I should agree with him: but it is the utmost extravagance to say, that he, who had neither title nor possession, should give the power to those who had always been in the possession of it, and exercised it in giving to him whatsoever he had. But I most wonder that he should so far forget himself, as to call this Henry a usurper, and detract from the validity of his acts, because he had no title; whereas there neither is, was, nor can be, a usurper, if there be any truth in his doctrine: for he plainly tells us, we are only to look to the power, and not at all to the means and ways, by which it is obtained; and, making no difference between a king and a tyrant, enjoins an equal submission to the commands of both. If this were only a slip of his pen, and he really did take this Henry to be a usurper, because he had not a good title, I should desire to know the marks by which a lawful king is distinguished from

a usurper, and in what a just title does consist. If he place it in an hereditary succession, we ought to be informed, whether this right must be deduced from one universal lord of mankind, or from a particular lord of every people: if from the universal lord, the same descent that gives him a right to the dominion of any one country, enslaves the whole world to him: if from the particular lord of one place, proof must be given how he came to be so: for if there was a defect in the first, it can never be repaired, and the possession is no more than a continued usurpation. But, having already proved the absurdity of any pretence to either, I shall forbear the repetition, and only say, that if the course of succession may never be justly interrupted, the family of Meroveus could not have had any right to the crown of France; Pepin was a usurper, if it must forever have continued in the descendants of Meroveus; and Hugh Capet could have no title, if the race of Pepin might not be dispossessed. I leave our author to dispute this point with the king of France; and when he has so far convinced him that he is a usurper, as to persuade him to resign his crown to the house of Austria, claiming from Pharamond, or to that of Lorrain, as descended from Pepin, I can give him half a dozen more knots, which will not be with less difficulty untied, and which, instead of establishing the titles of such kings as are known to us, will overthow them all, unless a right be given to usurpation, or the consent of a people do confer it.

But if there be such a thing as a usurper, and a rule by which men may judge of usurpation, it is not

only lawful, but necessary, for us to examine the titles of such as go under the name of kings, that we may know whether they are truly so or not, lest through ignorance we chance to give the veneration and obedience that is due to a king, to one who is not a king, and deny it to him, who by an uninterruptible line of descent is our natural lord, and thereby prefer the worst of men, and our most bitter enemy, before the person we ought to look upon as our father: and if this prove dangerous to one or more kings, it is our author's fault, not mine.

If there be no usurper, nor rule of distinguishing him from a lawful prince, Filmer is the worst of all triflers and impostors, who grounds his arguments in the most serious matters upon what he esteems to be false; but the truth is, he seems to have set himself against humanity and common sense, as much as against law and virtue: and if he, who so frequently contradicts himself, can be said to mean any thing, he would authorise rapine and murder, and persuade us to account those to be rightful kings, who, by treachery, and other unjust means, overthrow the right of descent, which he pretends to esteem sacred, as well as the liberties of nations, which by better judges are thought to be so, and gives the odious name of usurpation to the advancement of one who is made king by the consent of a willing people.

But if Henry the First was a usurper, I desire to know whether the same name belongs to all our kings, or which of them deserves a better, that we

may understand whose acts ought to be reputed legal, and to whose descent we owe veneration, or whether we are wholly exempted from all; for I cannot see a possibility of fixing the guilt of usurpation upon Henry the First, without involving many, if not all our kings, in the same.

If his title was not good, because his brother Robert was still living, that of Rufus is by the same reason overthrown; and William their father, being a bastard, could have none. This fundamental defect could never be repaired; for the successors could inherit no more than the right of the first, which was nothing. Stephen could deduce no title either from Norman or Saxon; whatsoever Henry the Second pretended, must be from his mother Maud, and any other might have been preferred before her as well as he. If her title was from the Normans, it must be void, since they had none, and the story of Edgar Atheling is too impertinent to deserve mention. But, however, it could be of no advantage to her: for David, king of Scotland, brother to his mother, from whom only her title could be derived, was then alive with his son Henry, who, dying not long after, left three sons, and three daughters, whose posterity, being distributed into many families of Scotland, remains to this day; and, if proximity of blood is to be considered, ought always to have been preferred before her, and her descendants, unless there be a law, that gives the preference to daughters before sons. What right soever Henry the Second had, it must necessarily

have perished with him, all his children having been begotten in manifest adultery, on Eleanor of Gascony, during the life of Lewis king of France, her first husband; and nothing could be alledged to colour the business, but a dispensation from the Pope, directly against the law of God, and the words of our Saviour, who says, "That a wife cannot be put away, unles for adultery; and he that marrieth her that is put away, committeth adultery." The pollution of this spring is not to be cured; but, though it should pass unregarded, no one part of the succession since that time has remained intire. John was preferred before Arthur, his elder brother's son: Edward the Third was made king by the deposition of his father; Henry the Fourth by that of Richard the Second. If the house of Mortimer or York had the right, Henry the Fourth, Fifth, and Sixth, were not kings, and all who claim under them have no title. However, Richard the Third could have none; for the children of his eldest brother, the duke of Clarence, were then living. The children of Edward the Fourth may be suspected of bastardy; and though it may have been otherwise, yet that matter is not so clear as things of such importance ought to be, and the consequence may reach very far. But, though that scruple were removed, it is certain, that Henry the Seventh was not king in the right of his wife Elizabeth; for he reigned before and after her; and for his other titles we may believe Philip de Commines, who says,*

* Mem. de Commin.

"He had neither cross nor pile."* If Henry the Eighth had a right in himself, or from his mother, he should have reigned immediately after her death, which he never pretended, nor to succeed till his father was dead, thereby acknowledging he had no right but from him, unless the Parliament and people can give it. The like may be said of his children. Mary could have no title, if she was a bastard, begotten in incest; but if her mother's marriage was good, and she legitimate, Elizabeth could have none.

Yet all these were lawful kings and queens; their acts continue in force to this day to all intents and purposes; the Parliament and people, therefore, have the power of making kings: those who are so made are not usurpers; we have had none but such for more than seven hundred years. They were, therefore, lawful kings, or this nation has had none in all that time; and if our author like this conclusion, the account from whence it is drawn may without difficulty be carried as high as our English histories do reach.

This, being built upon the steady foundation of law, history, and reason, is not to be removed by any man's opinion; especially by one accompanied with such circumstances as Sir Walter Raleigh was in, during the last years of his life: and there is

* Qui n'avoit ni croix, ne pille, ni nul droict, comme je croi, à la curonne d'Angleterre. Memoires, livre vii. c. 9.

something of baseness, as well as prevarication, in turning the words of an eminent person, reduced to great difficulties, to a sense no way agreeing with his former actions or writings, and no less tending to impair his reputation than to deceive others. Our author is highly guilty of both, in citing Sir Walter Raleigh to invalidate the great charter of our liberties, as "begun by usurpation and shewed to the world by rebellion;" whereas no such thing, nor any thing like it in word or principle, can be found in the works that deserve to go under his name. The dialogue in question, with some other small pieces published after his death, deserves to be esteemed spurious; or if, from a desire of life, when he knew his head lay under the axe, he was brought to say things no way agreeing with what he had formerly professed, they ought rather to be buried in oblivion, than produced to blemish his memory. But, that the public cause may not suffer by his fault, it is convenient the world should be informed, that though he was a well qualified gentleman, yet his morals were no way exact, as appears by his dealings with the brave earl of Essex. And he was so well assisted in his "history of the world," that an ordinary man, with the same helps, might have performed the same things. Neither ought it to be accounted strange, if that which he writ by himself had the tincture of another spirit, when he was deprived of that assistance, though his life had not depended upon the will of the prince, and he had never said, that *"the

* See Sir W. Raleigh's epistle to king James.

bonds of subjects to their kings should always be wrought out of iron, and those of kings to their subjects out of cobwebs."

SECTION XXXI.

FREE NATIONS HAVE A RIGHT OF MEETING, WHEN AND WHERE THEY PLEASE, UNLESS THEY DEPRIVE THEMSELVES OF IT.

A PERVERTED judgment always leads men into a wrong way, and persuades them to believe, that those things favour their cause, that utterly overthrow it. For a proof of this, I desire our author's words may be considered. "In the former parliaments," says he, "instituted and continued since Henry the First's time, is not to be found the usage of any natural liberty of the people: for all those liberties that are claimed in parliament, are liberties of grace from the king, and not the liberties of nature to the people: for if the liberty were natural, it would give power unto the multitude to assemble themselves when and where they pleased, to bestow the sovereignty, and by pactions to limit and direct the exercise of it." And I say, that nations, being naturally free, may meet, when and where they please; may dispose of the sovereignty, and may

direct or limit the exercise of it, unless by their own act they have deprived themselves of that right: and there could never have been a lawful assembly of any people in the world, if they had not had that power in themselves. It was proved in the preceding section, that all our kings, having no title, were no more than what the nobility and people made them to be; that they could have no power but what was given to them, and could confer none except what they had received. If they can, therefore, call parliaments, the power of so doing must have been given to them, and could not be given by any who had it not in themselves. The Israelites met together, and chose Ehud, Gideon, Samson, Jephtha, and others, to be their leaders, whom they judged fit to deliver them from their enemies. By the same right they assembled at Mispeth, to make war against the tribe of Benjamin, when justice was denied to be done against those who had villanously abused the Levite's concubine. In the like manner, they would have made Gideon king, but he refused. In the same place they met, and chose Saul to be their king. He being dead, the men of Judah assembled themselves, and annointed David; not long after, all the tribes met at Hebron, made a contract with him, and received him as their king. In the same manner, though by worse counsel, they made Absalom king. And the like was attempted in favour of Sheba the son of Bichri, though they then had a king chosen by themselves. When they found themselves oppressed by the tributes that had been laid upon them

by Solomon, they met at Shechim; and, being displeased with Rehoboam's answer to their complaints, ten of the tribes made Jeroboam king. Jehu, and all the other kings of Israel, whether good or bad, had no other title than was conferred upon them by the prevailing part of the people; who could not have given them any, unless they had met together; nor meet together without the consent, and against the will, of those that reigned, unless the power had been in themselves.

Where governments are more exactly regulated, the power of judging when it is fit to call the senate or people together, is referred to one or more magistrates; as in Rome to the consuls or tribunes, in Athens to the archons, and in Thebes to the bœotarches: but none of them could have these powers, unless they had been given to those who advanced them to the magistracies to which they were annexed; nor could they have been so annexed, if those who created them had not had the right in themselves. If these officers neglected their duty of calling such assemblies when the public affairs required, people met by their own authority, and punished the person, or abrogated the magistracy, as appears in the case of the decemviri, and many others that might be alledged, if the thing were not so plain as to need no other proof. The reason of this is, that they who institute a magistracy, best know whether the end of the institution be rightly pursued or not: and all just magistracies being the same in essence, though differing in form, the same right must perpetually

belong to those who put the sovereign power into the hands of one, a few, or many men, which is what our author calls the disposal of the sovereignty. Thus the Romans did when they created kings, consuls, military tribunes, dictators, or decemviri: and it had been most ridiculous to say, that those officers gave authority to the people to meet and chuse them; for they who are chosen are the creatures of those who chuse, and are nothing more than others till they are chosen. The last king of Sweden, Charles Gustavus, told a gentleman, who was ambassador there, that the Swedes having made him king, when he was poor, and had nothing in the world, he had but one work to do, which was so to reign, that they might never repent the good opinion they had conceived of him. They might therefore meet, and did meet, to confer the sovereignty upon him, or he could never have had it; for though the kingdom be hereditary to males or females, and his mother was sister to the great Gustavus, yet having married a stranger, without the consent of the estates, she performed not the condition upon which women are admitted to the succession; and thereby falling from her right, he pretended not to any. The act of his election declares he had none, and gives the crown to him, and the heirs of his body, with this farther declaration, that the benefit of his election should no way extend to his brother, prince Adolphus; and it is confessed by all the Swedish nation, that if the king now reigning should die without children, the estates would proceed to a new election.

It is rightly observed by our author, that if the people might meet, and give the sovereign power, they might also direct and limit it; for they did meet in this and other countries, they did confer the sovereign power, they did limit and direct the exercise; and the laws of each people shew in what manner and measure it is every where done. This is as certain in relation to kings, as any other magistrates. The commission of the Roman dictators was, to take care * "that the commonwealth might receive no detriment." The same was sometimes given to the consuls: king Offa's confession, that he was made king † "to preserve the public liberty," expresses the same thing: and Charles Gustavus, who said he had no other work, than to govern in such a manner, that they who had made him king might not repent, shewed there was a rule which he stood obliged to follow, and an end which he was to procure, that he might merit and preserve their good opinion. This power of conferring the sovereignty was exercised in France by those who made Meroveus king, in the prejudice of the two grandchildren of Pharamond, sons to Clodion; by those who excluded his race, and gave the crown to Pepin; by those who deposed Lewis le Debonair, and Charles le Gros; by those who brought in five kings, that were either bastards or strangers, between him and Charles le Simple; by those who rejected his race, and advanced Hugh Capet; by those who made Henry the

* Ne quid detrimenti respublica accipiat. T. Liv.

† In vestræ libertatis tuitionem. Mat. Par.

First king, to the prejudice of Robert his elder brother, and continued the crown in the race of Henry for ten generations, whilst the descendants of Robert were only dukes of Burgundy. The like was done in Castile and Arragon, by frequently preferring the younger before the elder brother; the descendants of females before those of the male line in the same degree; the more remote in blood before the nearest; and sometimes bastards before the legitimate issue. The same was done in England in relation to every king, since the coming in of the Normans, as I shewed in the last section, and other places of this work.

That they who gave the sovereignty, might also circumscribe and direct it, is manifest by the several ways of providing for the succession instituted by several nations. Some are merely elective, as the empire of Germany, and the kingdom of Poland, to this day; the kingdom of Denmark to the year 1660, that of Sweden till the time of Gustavus Eriscon, who delivered that nation from the oppression of Christiern the Seond, the cruel king of the Danes. In others, the election was confined to one or more families, as the kingdom of the Goths in Spain to the Balthei and Amalthei. In some, the eldest man of the reigning family was preferred before the nearest, as in Scotland before the time of Kennethus. In other places the nearest in blood is preferred before the elder, if more remote. In some, no regard is had to females, or their descendants, as in France and Turky. In others, they or their descendants

are admitted, either simply, as well as males; or under a condition of marrying in the country, or with the consent of the estates, as in Sweden. And no other reason can be given for this almost infinite variety of constitutions, than that they who made them would have it so; which could not be, if God and nature had appointed one general rule for all nations. For in that case, the kingdom of France must be elective, as well as that of Poland and the Empire; or the Empire and Poland hereditary, as that of France; daughters must succeed in France, as well as in England, or be excluded in England, as in France; and he that would establish one as the ordinance of God and nature, must necessarily overthrow all the rest.

A farther exercise of the natural liberty of nations is discovered in the several limitations put upon the sovereign power. Some kings, says Grotius,* have the "*summum imperium summo modo;*" others, "*modo non summo:*" and amongst those that are under limitations, the degrees, as to more or less, are almost infinite, as I have proved already by the example of Arragon, ancient Germany, the Saxon kings, the Normans, the kings of Castile, the present Empire, with divers others. And I may safely say, that the ancient government of France was much of the same nature to the time of Charles the Seventh, and Lewis the Eleventh; but the work of emancipating themselves, as they call it, begun by them, is

* De jur bel. & pac.

now brought to perfection in a boundless elevation of the king's greatness and riches, to the unspeakable misery of the people.

It were a folly to think this variety proceeds from the concessions of kings, who naturally delight in power, and hate that which crosses their will. It might with more reason be imagined, that the Roman consuls, who were brought up in liberty, who had contracted a love to their country, and were contented to live upon an equal foot with their fellow-citizens, should confine the power of their magistracy to a year; or that the dukes of Venice should be graciously pleased to give power to the "council of ten" to punish them capitally, if they transgressed the laws, than that kings should put such fetters upon their power, which they so much abhor; or that they would suffer them, if they could be easily broken. If any one of them should prove so moderate, like Trajan, as to command the prefect of the Prætorian guard to use the sword for him, if he governed well; and against him if he did not; it would soon be rescinded by his successor: the law which has no other strength than the act of one man, may be annulled by another. So that nothing does more certainly prove, that the laws made in several countries to restrain the power of kings, and variously to dispose of the succession, are not from them, than the frequent examples of their fury, who have exposed themselves to the greatest dangers, and brought infinite miseries upon the people, through the desire of making them. It must, therefore, be concluded, that nations have power of meeting together, and of

conferring, limiting, and directing the sovereignty; or all must be grounded upon most manifest injustice and usurpation.

No man can have a power over a nation otherwise than *de jure*, or *de facto*. He who pretends to have a power *de jure*, must prove that it is originally inherent in him, or his predecessor, from whom he inherits; or that it was justly acquired by him. The vanity of any pretence to an original right appears sufficiently, I hope, from the proofs already given, that the first fathers of mankind had it not; or if they had, no man could now inherit the same, there being no man able to make good the genealogy that should give him a right to the succession. Besides, the facility we have of proving the beginnings of all the families that reign among us, makes it as absurd for any of them to pretend a perpetual right to dominion, as for any citizen of London, whose parents and birth we know, to say he is the very man Noah, who lived in the time of the flood, and is now four or five thousand years old.

If the power were conferred on him or his predecessors, it is what we ask; for the collation can be of no value, unless it be made by those who had a right to do it; and the original right by descent failing, no one can have any over a free people but themselves, or those to whom they have given it.

If acquisition be pretended, it is the same thing; for there can be no right to that which is acquired, unless the right of invading be proved; and that

being done, nothing can be acquired except what belonged to the person that was invaded, and that only by him who had the right of invading. No man ever did or could conquer a nation by his own strength; no man, therefore, could ever acquire a personal right over any; and if it was conferred upon him by those who made the conquest with him, they were the people that did it. He can no more be said to have the right originally in and from himself, than a magistrate of Rome or Athens immediately after his creation; and, having no other at the beginning, he can have none to eternity; for the nature of it must refer to the original, and cannot be changed by time.

Whatsoever, therefore, proceeds not from the consent of the people, must be "*de facto*" only, that is, void of all right; and it is impossible there should not be a right of destroying that which is grounded upon none; and by the same rule that one man enjoys what he gained by violence, another may take it from him. Cyrus overthrew the Assyrians and Babylonians, Alexander the Medes and Persians; and if they had no right of making war upon those nations, the nations could not but have a right of recovering all that had been unjustly taken from them, and avenging the evils they had suffered. If the cause of the war was originally just, and not corrupted by an intemperate use of the victory, the conquered people was perhaps obliged to be quiet; but the conquering armies, that had conferred upon their

generals what they had taken from their enemies, might as justly expect an account of what they had given, and that it should be employed according to the intention of the givers, as the people of any city might do from their regularly created magistrates; because it was as impossible for Cyrus, Alexander, or Cæsar, to gain a power over the armies they led, without their consent, as for Pericles, Valerius, or any other unarmed citizen, to gain more power in their respective cities than was voluntarily conferred upon them. And I know no other difference between kingdoms so constituted by conquering armies, and such as are established in the most orderly manner, than that the first usually incline more to war and violence, the latter to justice and peace. But there have not been wanting many of the first sort (especially the nations coming from the north) who were no less exact in ordaining that which tended to the preservation of liberty, nor less severe in seeing it punctually performed, than the most regular commonwealths that ever were in the world. And it can with no more reason be pretended, that the Goths received their privileges from Alan or Theodoric, the Francs from Pharamond or Meroveus, and the English from Ina or Ethelred, than that the liberty of Athens was the gift of Themistocles or Pericles, that the Empire of Rome proceeded from the liberality of Brutus or Valerius, and that the commonwealth of Venice, at this day, subsists by the favour of the Contarini or Moresini; which must reduce us to matter of right, since that of fact, void of right, can signify nothing.

SECTION XXXII.

THE POWERS OF KINGS ARE SO VARIOUS, ACCORDING TO THE CONSTITUTIONS OF SEVERAL STATES, THAT NO CONSEQUENCE CAN BE DRAWN TO THE PREJUDICE OR ADVANTAGE OF ANY ONE, MERELY FROM THE NAME.

In opposition to what is above said, some alledge the name of king, as if there were a charm in the word; and our author seems to put more weight upon it, than the reasons he brings to support his cause. But that we may see there is no efficacy in it, and that it conveys no other right than what particular nations may annex to it, we are to consider,

1. That the most absolute princes that are, or have been, in the world, never had the name of king; whereas it has been frequently given to those whose powers have been very much restrained. The Cæsars were never called kings, till the sixth age of christianity: the Califs and Soldan of Egypt and Babylon, the Great Turk, the Cham of Tartary, or the Great Mogul, never took that name, nor any other of the same signification. The Czar of Muscovy has it not, though he is as absolute a monarch, and his people as miserable slaves, as any in the world. On the other side, the chief magistrates of Rome and Athens for some time, those of Sparta, Arragon,

Sweden, Denmark, and England, "who could do nothing but by law," have been called kings. This may be enough to shew, that a name being no way essential, what title soever is given to the chief magistrate, he can have no other power than the laws and customs of his country do give, or the people confer upon him.

2. The names of magistrates are often changed, though the power continues to be the same; and the powers are sometimes altered though the name remains. When Octavius Cæsar, by the force of a mad, corrupted soldiery, had overthrown all law and right, he took no other title in relation to military affairs than that of "*imperator*," which in the time of liberty was by the armies often given to prætors and consuls; in civil matters he was, as he pretended,* content with the power of tribune; and the like was observed in his successor, who to new-invented usurpations, "gave old and approved names."† On the other side, those titles which have been rendered odious and execrable by the violent exercise of an absolute power, are sometimes made popular by moderate limitations; as in Germany, where, though the monarchy seems to be as well tempered as any, the princes retain the same names of "*imperator*, Cæsar," and "Augustus," as those had done, who, by the excess of their rage and fury, had desolated and corrupted the best part of the world.

* Tribunitia protestate contentus. C. TACITUS. † Ibid.

Sometimes the name is changed, though the power in all respects continues to be the same. The lords of Castile had for many ages no other title than that of count; and when the nobility and people thought good, they changed it to that of king, without any addition to the power.*

The sovereign magistrate in Poland was called duke, till within the last two hundred years, when they gave the title of king to one of the Jagellan family; which title has continued to this day, though without any change in the nature of the magistracy. And I presume, no wise man will think, that if the Venetians should give the name of king to their duke, it could confer any other power upon him, than he has already, unless more should be conferred by the authority of the great council.

3. The same names which in some places denote the supreme magistracy, in others are subordinate, or merely titular. In England, France, and Spain, dukes and earls are subjects: in Germany, the electors and princes who are called by those names are little less than sovereigns; and the dukes of Savoy, Tuscany, Muscovy, and others, acknowledge no superior, as well as those of Poland and Castile had none, when they went under those titles. The same may be said of kings. Some are subject to a foreign power, as divers of them were subject to the Persian and Babylonian monarchs, who for that

* Saavedra, Mariana, Zurita.

reason were called the kings of kings. Some also are tributaries; and when the Spaniards first landed in America, the great kings of Mexico and Peru had many others under them. Threescore and ten kings gathered up meat under the table of Adonibezek. The Romans had many kings depending upon them. Herod, with those of his race, was of this number; and the dispute between him and his sons, Aristobulus and Alexander, was to be determined by them; neither durst he decide the matter till it was referred to him. But a right of appeal did still remain, as appears by the case of St. Paul, when Agrippa was king. The kings of Mauritania from the time of Massinissa, were under the like dependance: Jugurtha went to Rome to justify himself for the death of Micipsa: Juba was commanded by the Roman magistrates, Scipio, Petreius, and Afranius: another Juba was made king of the same country by Augustus, and Tiridates of Armenia by Nero; and infinite examples of this nature may be alledged. Moreover, their powers are variously regulated, according to the variety of tempers in nations and ages. Some have restrained the powers that by experience were found to be exorbitant; others have dissolved the bonds that were laid upon them: and laws relating to the institution, abrogation, enlargement, or restriction of the regal power, would be utterly insignificant, if this could not be done. But such laws are of no effect in any other country than where they are made. The lives of the Spartans did not depend upon the will of Agesilaus or Leonidas, because Nabuchodonosor could kill or save whom he

pleased: and though the king of Morocco may stab his subjects, throw them to the lions, or hang them upon tenterhooks, yet a king of Poland would probably be called to a severe account, if he should unjustly kill a single man.

SECTION XXXIII.

THE LIBERTY OF A PEOPLE IS THE GIFT OF GOD AND NATURE.

If any man ask, how nations come to have the power of doing these things, I answer, that liberty being only an exemption from the dominion of another, the question ought not to be, how a nation can come to be free, but how a man comes to have a dominion over it; for till the right of dominion be proved and justified, liberty subsists, as arising from the nature and being of a man. Tertullian, speaking of the emperors, says, "*ab eo imperium, a quo spiritus;*" and we, taking man in his first condition, may justly say, "*ab eo libertas, a quo spiritus;*" for no man can owe more than he has received. The creature having nothing, and being nothing but what the Creator makes him, must owe all to him, and nothing to any one from whom he has received nothing. Man, therefore, must be

naturally free, unless he be created by another power than we have yet heard of. The obedience due to parents arises from hence, in that they are the instruments of our generation; and we are instructed by the light of reason, that we ought to make great returns to those from whom, under God, we have received all. When they die, we are their heirs, we enjoy the same rights, and devolve the same to our posterity. God only, who confers this right upon us, can deprive us of it: and we can no way understand that he does so, unless he had so declared by express revelation, or had set some distinguishing marks of dominion and subjection upon men; and, as an ingenious person not long since said, caused some to be born with crowns upon their heads, and all others with saddles upon their backs. This liberty, therefore, must continue, till it be either forfeited, or willingly resigned. The forfeiture is hardly comprehensible in a multitude that is not entered into any society; for, as all are equal, and *"equals can have no right over each other," no man can forfeit any thing to one, who can justly demand nothing, unless it may be by personal injury, which is nothing to this case; because where there is no society, one man is not bound by the actions of another. All cannot join in the same act, because they are joined in none; or if they should, no man could recover, much less transmit, the forfeiture; and not being transmitted, it perishes, as if it had never been, and no man can claim any thing from it.

* Par in parem non habet imperium.

It will be no less difficult to bring resignation to be subservient to our author's purpose; for men could not resign their liberty, unless they naturally had it in themselves. Resignation is a public declaration of their assent to be governed by the person to whom they resign; that is, they do by the act constitute him to be their governor. This necessarily puts us upon the inquiry, why they do resign, how they will be governed, and proves the governor to be their creature: and the right of disposing the government must be in them, or they who receive it can have none. This is so evident to common sense, that it were impertinent to ask who made Carthage, Athens, Rome, or Venice, to be free cities. Their charters were not from men, but from God and nature. When a number of Phœnicians had found a port on the coast of Africa, they might perhaps agree with the inhabitants for a parcel of ground; but they brought their liberty with them. When a company of Latins, Sabines, and Tuscans, met together upon the banks of the Tiber, and chose rather to build a city for themselves, than to live in such as were adjacent, they carried their liberty in their own breasts, and had hands and swords to defend it. This was their charter; and Romulus could confer no more upon them, than Dido upon the Carthaginians. When a multitude of barbarous nations infested Italy, and no protection could be expected from the corrupted and perishing Empire, such as agreed to seek a place of refuge in the scattered islands of the Adriatic gulf, had no need of any man's

authority, to ratify the institution of their government. They, who were the formal part of the city, and had built the material, could not but have a right of governing it as they pleased, since, if they did amiss, the hurt was only to themselves. It is probable enough, that some of the Roman emperors, as lords of the soil, might have pretended to a dominion over them, if there had been any colour for it: but nothing of that kind appearing in thirteen hundred years, we are not like to hear of any such cavils. It is agreed by mankind, that subjection and protection are relative; and that he who cannot protect those who are under him, in vain pretends to a dominion over them. The only ends for which governments are constituted, and obedience rendered to them, are the obtaining of justice and protection; and they who cannot provide for both, give the people a right of taking such ways as best please themselves, in order to their own safety.

The matter is yet more clear in relation to those who never were in any society, as at the beginning, or renovation of the world after the flood; or who, upon the dissolution of the societies to which they did once belong, or by some other accident, have been obliged to seek new habitations. Such were those who went from Babylon upon the confusion of tongues: those who escaped from Troy, when it was burnt by the Grecians: almost all the nations of Europe, with many of Asia and Africa, upon the dissolution of the Roman Empire. To which may be added, a multitude of Northern nations, who,

when they had increased to such numbers that their countries could no longer nourish them, or because they wanted skill to improve their lands, were sent out to provide for themselves; and having done so, did erect many kingdoms and states, either by themselves, or in union and coalition with the ancient inhabitants.

It is in vain to say, that wheresoever they came, the land did belong to somebody; and that they who came to dwell there, must be subject to the laws of those who were lords of the soil; for that is not always true in fact. Some come into desart countries that have no lord, others into such as are thinly peopled, by men, who, knowing not how to improve their land do either grant part of it upon easy terms to the new comers, or grow into a union with them in the enjoyment of the whole: and histories furnish us with infinite examples of this nature.

If we look into our own original, without troubling ourselves with the senseless stories of Samothes the son of Japhet, and his magicians, or the giants begotten by spirits upon the thirty daughters of Danaus sent from Phœnicia in a boat without sail, oars, or rudder, we shall find, that when the Romans abandoned this island, the inhabitants were left to a full liberty of providing for themselves: and whether we deduce our original from them, or the Saxons, or from both, our ancestors were perfectly free; and the Normans having inherited the same right when they came to be one nation with the former, we can-

not but continue so still, unless we have enslaved ourselves.

Nothing is more contrary to reason than to imagine this. When the fierce barbarity of the Saxons came to be softened by a more gentle climate, the arts and religion they learnt, taught them to reform their manners, and better enabled them to frame laws for the preservation of their liberty, but no way diminished their love to it: and though the Normans might desire to get the lands of those who had joined with Harold, and of others, into their hands, yet when they were settled in the country, and by marriages united to the ancient inhabitants, they became true Englishmen, and no less lovers of liberty, and resolute defenders of it, than the Saxons had been. There was then neither conquering Norman, nor conquered Saxon, but a great and brave people composed of both, united in blood and interest in the defence of their common rights, which they so well maintained, that no prince since that time has too violently encroached upon them, who, as the reward of his folly has not lived miserably, and died shamefully.

Such actions of our ancestors do not, as I suppose, savour much of the submission which patrimonial slaves do usually render to the will of their lord. On the contrary, whatsoever they did was by a power inherent in themselves, to defend that liberty in which they were born. All their kings were created upon the same condition, and for the same ends. Alfred

acknowledged he found and left them perfectly free; and the confession of Offa, that they had not made him king for his own merits, but for the defence of their liberty, comprehends all that were before and after him. They well knew how great the honour was, to be made head of a great people; and rigorously exacted the performance of the ends for which such a one was elevated, severely punishing those who basely and wickedly betrayed the trust reposed in them, and violated all that is most sacred among men; which could not have been, unless they were naturally free; for the liberty that has no being, cannot be defended.

SECTION XXXIV.

NO VENERATION PAID, OR HONOUR CONFERRED UPON A JUST AND LAWFUL MAGISTRATE, CAN DIMINISH THE LIBERTY OF A NATION.

Some have supposed, that though the people be naturally free, and magistrates created by them, they do by such creations deprive themselves of that natural liberty; and that the names of "king, sovereign lord," and "dread sovereign," being no way consistent with liberty, they who give such titles do renounce it. Our author carries this very far, and

lays great weight upon the submissive language used by the people, when they "humbly crave that his majesty would be pleased to grant their accustomed freedom of speech, and access to his person;" and "give the name of supplications and petitions to the addresses made to him:" whereas he answers in the haughty language of "*Le roy le veut*, *Le roy s'avisera*," and the like. But they who talk at this rate, shew, that they neither understand the nature of magistracy, nor the practice of nations. Those who have lived in the highest exercise of their liberty, and have been most tenacious of it, have thought no honour too great for such magistrates as were eminent in the defence of their rights, and were set up for that end. The name of dread sovereign might justly have been given to a Roman dictator, or consul; for they had the sovereign authority in their hands, and power sufficient for its execution. Whilst their magistracy continued, they were a terror to the same men, whose axes and rods had been a terror to them the year or month before, and might be so again the next. The Romans thought they could not be guilty of excess in carrying the power and veneration due to their dictator to the highest: and Livy tells us, that his "*edicts were esteemed sacred." I have already shewn, that this haughty people, who might have commanded, condescended to join with their tribunes in a petition to the dictator Papirius, for the life of Quintus Fabius, who had fought a battle in his absence, and without his order, though he had gained a great and memorable victory. The

* Edictum dictatoris pro numine observatum. Hist. l. 8.

same Fabius, when consul, was commended by his father Q. Fabius Maximus, for obliging him by his lictors, to dismount from his horse, and to pay him the same respect that was due from others. The tribunes of the people, who were instituted for the preservation of liberty, were also esteemed sacred and inviolable, as appears by that phrase, "*sacro-sancta tribunorum potestas*," so common in their ancient writers. No man, I presume, thinks any monarchy more limited, or more clearly derived from a delegated power, than that of the German emperors; and yet, "*sacra Cæsarea majestas*" is the public style. Nay, the Hollanders at this day call their burgermasters, though they see them selling herring or tar, "high and mighty lords," as soon as they are advanced to be of the thirty-six, forty-two, or forty-eight magistrates of a small town. It is no wonder, therefore, if a great nation should think it conducive to their own glory, to give magnificent titles, and use submissive language, to that one man whom they set up to be their head; most especially, if we consider, that they came from a country where such titles and language were principally invented.

Among the Romans and Grecians we hear nothing of majesty, highness, serenity, and excellence, appropriated to a single person, but receive them from Germany and other northern countries. We find "*majestas populi Romani*," and "*majestas imperii*," in their best authors; but no man, speaking to Julius or Augustus, or even to the vainest of their successors, ever used those empty titles, nor took upon

themselves the name of servants, as we do to every fellow we meet in the streets. When such ways of speaking are once introduced, they must needs swell to a more than ordinary height in all transactions with princes. Most of them naturally delight in vanity, and courtiers never speak more truth, than when they most extol their masters, and assume to themselves the names that best express the most abject slavery. These, being brought into mode, like all ill customs, increase by use; and then no man can omit them, without bringing that hatred and danger upon himself which few will undergo, except for something that is evidently of great importance. Matters of ceremony and title, at the first, seem not to be so; and, being for some time neglected, they acquire such strength as not to be easily removed. From private usage they pass into public acts; and those flatterers who gave a beginning to them, proposing them in public councils, where too many of that sort have always insinuated themselves, gain credit enough to make them pass. This work was farther advanced by the church of Rome, according to their custom of favouring that most, which is most vain and corrupt; and it has been usual with the popes, and their adherents, liberally to gratify princes for services rendered to the church, with titles that tended only to the prejudice of the people. These poisonous plants, having taken root, grew up so fast, that the titles which, within the space of a hundred years, were thought sufficient for the kings and queens of England, have of late been given to Monk, and his honourable dutchess. New phrases have been invented

to please princes, or the sense of the old perverted, as has happened to that of "*Le roy s'avisera :*" and that which was no more than a liberty to consult with the lords upon a bill presented by the commons, is by some men now taken for a right inherent in the king, of denying such bills as may be offered to him by the lords and commons; though the coronation oath obliges him to hold, keep, and defend, the just laws and customs, "*quas vulgus elegerit.*" And, if a stop be not put to this exorbitant abuse, the words still remaining in acts of Parliament, which shew that their acts are our laws, may perhaps be also abolished.

But though this should come to pass, by the slackness of the lords and commons, it could neither create a new right in the king nor diminish that of the people; but it might give a better colour to those who are enemies to their country, to render the power of the crown arbitrary, than any thing that is yet among us.

SECTION XXXV.

THE AUTHORITY GIVEN BY OUR LAW TO THE ACTS PERFORMED BY A KING DE FACTO, DETRACT NOTHING FROM THE PEOPLE'S RIGHT OF CREATING WHOM THEY PLEASE.

They who have more regard to the prevailing power than to right, and lay great weight upon the statute of Henry the Seventh, which authorises the acts of a king "*de facto*," seem not to consider that thereby they destroy all right of inheritance; that he only is king "*de facto*," who is received by the people; and that this reception could neither be of any value in itself, nor be made valid by a statute, unless the people and their representatives, who make the statute, had in themselves the power of receiving, authorising, and creating, whom they please. For he is not king "*de facto*" who calls himself so, as Perkin or Simnel, but he who, by the consent of the nation, is possessed of the regal power. If there were such a thing in nature, as a natural lord over every country, and that the right must go by descent, it would be impossible for any other man to acquire it, or for the people to confer it upon him, and to give the authority to the acts of one, who neither is, nor can be, a king, which belongs only to him, who has the right inherent in himself, and inseparable from him. Neither can it be denied, that the same

power which gives the validity to such acts as are performed by one who is not a king, that belongs to those of a true king, may also make him king; for the essence of a king consists in the validity of his acts. And it is equally absurd for one to pretend to be a king, whose acts as king are not valid, as that his own can be valid, if those of another are; for then the same indivisible right which our author, and those of his principles, assert to be inseparable from the person, would be at the same time exercised and enjoyed by two distinct and contrary powers.

Moreover, it may be observed, that this statute was made, after frequent and bloody wars concerning titles to the crown; and whether the cause were good or bad, those who were overcome, were not only subject to be killed in the field, but afterwards to be prosecuted as traitors under the colour of law. He who gained the victory, was always set up to be king by those of his party: and he never failed to proceed against his enemies as rebels. This introduced a horrid series of the most destructive mischiefs. The fortune of war often varied; and I think it may be said, that there were few, if any, great families in England, that were not either destroyed, or at least so far shaken, as to lose their chiefs, and many considerable branches of them: and experience taught, that instead of gaining any advantage to the public, in point of government, he for whom they fought, seldom proved better than his enemy. They saw that the like might again happen, though the title of the reigning king should be as clear as descent of blood could make it. This

brought things into an uneasy posture: and it is not strange, that both the nobility and commonalty should be weary of it. No law could prevent the dangers of battle; for he that had followers, and would venture himself, might bring them to such a decision, as was only in the hand of God. But thinking no more could justly be required to the full performance of their duty to the king, than to expose themselves to the hazard of battle for him, and not being answerable for the success, they would not have that law, which they endeavoured to support, turned to their destruction by their enemies, who might come to be the interpreters of it. But, as they could be exempted from this danger only by their own laws, which could authorize the acts of a king without a title, and justify them for acting under him, it is evident, that the power of the law was in their hands, and that the acts of the person who enjoyed the crown, were of no value in themselves. The law had been impertinent, if it could have been done without law; and the intervention of the Parliament useless, if the kings "*de facto*" could have given authority to their own acts. But if the Parliament could make that to have the effect of law, which was not law, and exempt those that acted according to it from the penalties of the law, and give the same force to the acts of one who is not king, as of one who is, they cannot but have a power of making him king, who is not so; that is to say, all depends intirely upon their authority.

Besides, he is not king who assumes the title to himself, or is set up by a corrupt party; but he who

according to the usages required in the case, is made king. If these are wanting, he is neither "*de facto*," nor "*de jure*," but "*tyrannus sine titulo*." Nevertheless, this very man, if he come to be received by the people, and placed in the throne, he is thereby made king "*de facto*." His acts are valid in law; the same service is due to him as to any other; they who render it are in the same manner protected by the law; that is to say, he is truly king. If our author, therefore, do allow such to be kings, he must confess that power to be good which makes them so, when they have no right in themselves. If he deny it, he must not only deny, that there is any such thing as a king "*de facto*," which the statute acknowledges, but that we ever had any king in England; for we never had any other than such, as I have proved before.

By the same means he will so disorder all the law, that no man shall know what he has, or what he ought to do or avoid: and will find no remedy for this, unless he allow, that laws made without kings are as good as those made with them, which returns to my purpose: for they who have the power of making laws, may by law make a king as well as any other magistrate. And, indeed, the intention of this statute could be no other than to secure men's persons and possessions, and so far to declare the power of giving and taking away the crown to be in the Parliament, as to remove all disputes concerning titles, and to make him to be a legal king, whom they acknowledge to be king.

SECTION XXXVI.

THE GENERAL REVOLT OF A NATION CANNOT BE CALLED A REBELLION.

As impostors seldom make lies to pass in the world, without putting false names upon things, such as our author endeavour to persuade the people that they ought not to defend their liberties, by giving the name of rebellion to the most just and honourable actions that have been performed for the preservation of them; and, to aggravate the matter, fear not to tell us, that rebellion is like the sin of witchcraft. But those who seek after truth will easily find, that there can be no such thing in the world as the rebellion of a nation against its own magistrates, and that rebellion is not always evil. That this may appear, it will not be amiss to consider the word, as well as the thing, understood by it, as it is used in an evil sense.

The word is taken from the Latin "*rebellare*," which signifies no more than to renew a war. When a town or province had been subdued by the Romans and brought under their dominion, if they violated their faith after the settlement of peace, and invaded their masters, who had spared them, they were said to rebel. But it had been more absurd to apply that word to the people that rose against the decemviri,

kings, or other magistrates, than to the Parthians, or any of those nations who had no dependence upon them; for all the circumstances that should make a rebellion were wanting, the word implying a superiority in them against whom it is, as well as the breach of an established peace. But though every private man, singly taken, be subject to the commands of the magistrate, the whole body of the people is not so; for he is by and for the people, and the people is neither by nor for him. The obedience due to him from private men, is grounded upon, and measured by, the general law; and that law, regarding the welfare of the people, cannot set up the interest of one or a few men against the public. The whole body, therefore, of a nation cannot be tied to any other obedience than is consistent with the common good, according to their own judgment: and having never been subdued, nor brought to terms of peace with their magistrates, they cannot be said to revolt or rebel against them, to whom they owe no more than seems good to themselves, and who are nothing of or by themselves, more than other men.

Again, the thing signified by rebellion is not always evil; for, though every subdued nation must acknowledge a superiority in those who have subdued them, and rebellion does imply a breach of the peace; yet that superiority is not infinite: the peace may be broken upon just grounds, and it may be neither a crime nor infamy to do it. The Privernates had been more than once subdued by the Romans, and had as often rebelled. Their city was at last taken

by Plautius the consul,* after their leader Vitruvius, and great numbers of their senate and people, had been killed; being reduced to a low condition, they sent ambassadors to Rome to desire peace; where, when a senator asked them what punishment they deserved, one of them answered, "The same which they deserve, who think themselves worthy of liberty." The consul then demanded "what kind of peace might be expected from them, if the punishment should be remitted." The ambassador answered, "† If the terms you give be good, the peace will be observed by us faithfully and perpetually; if bad, it will soon be broken." And though some were offended with the ferocity of the answer, yet the best part of the senate approved it, as "‡ worthy of a man and a freeman;" and, confessing that no man or nation would continue under an uneasy condition, longer than they were compelled by force, said, "§ They only were fit to be made Romans, who thought nothing valuable but liberty." Upon which they were all made citizens of Rome, and obtained whatsoever they had desired.

I know not how this matter can be carried to a greater height; for if it were possible, that a people

* T. Liv. l. 8.

† Si bonam dederitis, fidam & perpetuam; si malam, haud diuturnam. Liv.

‡ Viri & liberi vocem auditam. Ibid.

§ Eos demum, qui nihil præterquam de libertate cogitant, dignos esse, qui Romani fiant. Ibid.

resisting oppression, and vindicating their own liberty, could commit a crime, and incur either guilt or infamy, the Privernates did, who had been often subdued, and often pardoned; but, even in the judgment of their conquerors, whom they had offended, the resolution they professed of standing to no agreement imposed upon them by necessity, was accounted the highest testimony of such a virtue as rendered them worthy to be admitted into a society and equality with themselves, who were the most brave and virtuous people of the world.

But if the patience of a conquered people may have limits, and they who will not bear oppression from those who had spared their lives, may deserve praise and reward from their conquerors, it would be madness to think, that any nation can be obliged to bear whatsoever their own magistrates think fit to do against them. This may seem strange to those who talk so much of conquests made by kings; immunities, liberties, and privileges, granted to nations; oaths of allegiance taken, and wonderful benefits conferred upon them. But having already said as much as is needful concerning conquests, and that the magistrate, who has nothing except what is given to him, can only dispense out of the public stock such franchises and privileges as he has received for the reward of services done to the country, and encouragement of virtue, I shall at present keep myself to the two last points.

Allegiance signifies no more (as the words "*ad legem*" declare) than such an obedience as the law requires. But as the law can require nothing from the whole people, who are masters of it, allegiance can only relate to particulars, and not to the whole. No oath can bind any other than those who take it, and that only in the true sense and meaning of it: but single men only take this oath, and, therefore, single men are obliged to keep it; the body of a people neither does, nor can perform any such act: agreements and contracts have been made; as the tribe of Judah, and the rest of Israel afterwards, made a covenant with David, upon which they made him king: but no wise man can think, that the nation did thereby make themselves the creature of their own creature.

The sense also of an oath ought to be considered. No man can by an oath be obliged to any thing beyond, or contrary to, the true meaning of it; private men who swear obedience "*ad legem*," swear no obedience "*extra*," or "*contra legem*:" whatsoever they promise or swear, can detract nothing from the public liberty, which the law principally intends to preserve. Though many of them may be obliged, in their several stations and capacities, to render peculiar services to a prince, the people continue as free as the internal thoughts of man, and cannot but have a right to preserve their liberty, or avenge the violation.

If matters are well examined, perhaps not many magistrates can pretend to much upon the title of merit, most especially if they or their progenitors have continued long in office. The conveniences annexed to the exercise of the sovereign power, may be thought sufficient to pay such scores as they grow due, even to the best: and as things of that nature are handled, I think it will hardly be found, that all princes can pretend to an irresistible power upon the account of beneficence to the people. When the family of Medices came to be masters of Tuscany, that country was, without dispute, in men, money, and arms, one of the most flourishing provinces in the world, as appears by Machiavel's account, and the relation of what happened between Charles the Eighth, and the magistrates of Florence, which I have mentioned already from Guicciardin. Now, whoever shall consider the strength of that country in those days, together with what it might have been in the space of a hundred and forty years, in which they have had no war, nor any other plague, than the extortion, fraud, rapine, and cruelty of their princes, and compare it with their present desolate, wretched, and contemptible condition, may, if he please, think, that much veneration is due to the princes that govern them; but will never make any man believe, that their title can be grounded upon beneficence. The like may be said of the duke of Savoy, who, pretending (upon I know not what account) that every peasant in the dutchy ought to pay him two crowns every half year, did, in 1662, subtilely find out, that in every year there

were thirteen halves; so that a poor man, who had nothing but what he gained by hard labour, was, through his fartherly care and beneficence, forced to pay six-and-twenty crowns to his royal highness, to be employed in his discreet and virtuous pleasures at Turin.

The condition of the seventeen provinces of the Netherlands (and even of Spain itself) when they fell to the house of Austria, was of the same nature: and I will confess as much as can be required, if any other marks of their government do remain, than such as are manifest evidences of their pride, avarice, luxury, and cruelty.

France, in outward appearance, makes a better shew: but nothing in this world is more miserable, than that people under the fatherly care of their triumphant monarch. The best of their condition is, like asses and mastiff-dogs, to work and fight, to be oppressed and killed for him; and those among them, who have any understanding, well know, that their industry, courage, and good success, is not only unprofitable, but destructive to them; and that by increasing the power of their master, they add weight to their own chains. And if any prince, or succession of princes, have made a more modest use of their power, or more faithfully dicharged the trust reposed in them, it must be imputed peculiarly to them, as a testimony of their personal virtue, and can have no effect upon others.

The rights, therefore, of kings are not grounded upon conquest; the liberties of nations do not arise from the grants of their princes; the oath of allegiance binds no private man to more than the law directs, and has no influence upon the whole body of any nation; many princes are known to their subjects only by the injuries, losses, and mischiefs, brought upon them; such as are good and just, ought to be rewarded for their personal virtue, but can confer no right upon those who no way resemble them; and whoever pretends to that merit, must prove it by his actions: rebellion, being nothing but a renewed war, can never be against the government that was not established by war, and of itself is neither good nor evil, more than any other war; but is just or unjust, according to the cause or manner of it. Besides, that rebellion, which by Samuel is compared to witchcraft,* is not of private men, or a people, against the prince, but of the prince against God: the Israelites are often said to have rebelled against the law, word, or command of God; but though they frequently opposed their kings, I do not find rebellion imputed to them on that account, nor any ill character put upon such actions. We are told also of some kings who had been subdued, and afterwards rebelled against Chedorlaomer, and other kings; but their cause is not blamed, and we have some reason to believe it good, because Abraham took part with those who had rebelled. However, it can be of no prejudice to the cause I defend: for

* 1 Sam. xv. 23.

though it were true, that those subdued kings could not justly rise against the person who had subdued them; or that generally no king, being once vanquished, could have a right of rebellion against his conqueror; it could have no relation to the actions of a people vindicating their own laws and liberties against a prince who violates them; for that war which never was, can never be renewed. And if it be true in any case, that hands and swords are given to men, that they only may be slaves who have no courage, it must be when liberty is overthrown by those, who of all men ought with the utmost industry and vigour to have defended it.

That this should be known, is not only necessary for the safety of nations, but advantageous to such kings as are wise and good. They who know the frailty of human nature, will always distrust their own; and, desiring only to do what they ought, will be glad to be restrained from that which they ought not to do. Being taught by reason and experience, that nations delight in the peace and justice of a good government, they will never fear a general insurrection, whilst they take care it be rightly administered; and finding themselves by this means to be safe, will never be unwilling, that their children or successors should be obliged to tread in the same steps.

If it be said, that this may sometimes cause disorders, I acknowledge it; but no human condition being perfect, such a one is to be chosen, which carries with it the most tolerable inconveniences;

and it being much better, that the irregularities and excesses of a prince should be restrained or suppressed, than that whole nations should perish by them, those constitutions that make the best provision against the greatest evils, are most to be commended. If governments were instituted to gratify the lusts of one man, those could not be good that set limits to them; but all reasonable men confessing that they are instituted for the good of nations, they only can deserve praise, who, above all things, endeavour to procure it, and appoint means proportioned to that end. The great variety of governments which we see in the world, is nothing but the effect of this care; and all nations have been, and are, more or less happy, as they or their ancestors have had vigour of spirit, integrity of manners, and wisdom to invent and establish such orders, as have better or worse provided for this common good, which was sought by all. But, as no rule can be so exact as to make provision against all contestations, and all disputes about right do naturally end in force when justice is denied (ill men never willingly submitting to any decision, that is contrary to their passions and interests) the best constitutions are of no value, if there be not a power to support them. This power first exerts itself in the execution of justice by the ordinary officers: but no nation having been so happy as not sometimes to produce such princes as Edward and Richard, the Seconds, and such ministers as Gaveston, Spencer, and Tresilian, the ordinary officers of justice often want the will, and always the power, to restrain them. So that the rights and

liberties of a nation must be utterly subverted and abolished, if the power of the whole may not be employed to assert them, or punish the violation of them. But as it is the fundamental right of every nation to be governed by such laws, in such manner, and by such persons, as they think most conducing to their own good, they cannot be accountable to any but themselves for what they do in that most important affair.

SECTION XXXVII.

THE ENGLISH GOVERNMENT WAS NOT ILL CONSTITUTED, THE DEFECTS MORE LATELY OBSERVED PROCEEDING FROM THE CHANGE OF MANNERS, AND CORRUPTION OF THE TIMES.

I AM not ignorant, that many honest and good men, acknowledging these rights, and the care of our ancestors to preserve them, think they wanted wisdom rightly to proportionate the means to the end. It is not enough, say they, for the general of an army to desire victory; he only can deserve praise, who has skill, industry, and courage, to take the best measures of obtaining it. Neither is it enough for wise legislators to preserve liberty, and to erect such a government as may stand for a time; but to set

such clear rules to those, who are to put it in execution, that every man may know when they transgress: and appoint such means for restraining or punishing them, as may be used speedily, surely, and effectually, without danger to the public. Sparta being thus constituted, we hardly find, that, for more than eight hundred years, any king presumed to pass the limits prescribed by the law. If any Roman consul grew insolent, he might be reduced to order without blood, or danger to the public; and no dictator ever usurped a power over liberty till the time of Sylla, when all things in the city were so changed, that the ancient foundations were become too narrow. In Venice the power of the duke is so circumscribed, that in thirteen hundred years, no one, except Falerio and Tiepoli, has dared to attempt any thing against the laws: and they were immediately suppressed with little commotion in the city. On the other side, our law is so ambiguous, perplext, and intricate, that it is hard to know when it is broken. In all the public contests we have had, men of good judgment and integrity have followed both parties. The means of transgressing and procuring partizans to make good by force the most notorious violations of liberty, have been so easy, that no prince, who has endeavoured it, ever failed to get great numbers of followers, and to do infinite mischiefs, before he could be removed. The nation has been brought to fight against those they had made to be what they were, upon the unequal terms of hazarding all against nothing. If they had success, they gained no more than

was their own before, and which the law ought to have secured: whereas it is evident, that if at any one time the contrary had happened, the nation had been utterly enslaved; and no victory was ever gained without the loss of much noble and innocent blood.

To this I answer, that no right judgment can be given of human things, without a particular regard to the time in which they passed. We esteem Scipio, Hannibal, Pyrrhus, Alexander, Epaminondas, and Cæsar, to have been admirable commanders in war, because they had, in a most eminent degree, all the qualities that could make them so, and knew best how to employ the arms, then in use, according to the dicipline of their times; and yet no man doubts that if the most skilful of them could be raised from the grave, restored to the utmost vigour of mind and body, set at the head of the best armies he ever commanded, and placed upon the frontiers of France or Flanders, he would not know how to advance or retreat, nor by what means to take any of the places in those parts, as they are now fortified and defended; but would most certainly be beaten by any insignificant fellow with a small number of men, furnished with such arms as are now in use, and following the methods now practised. Nay, the manner of marching, encamping, besieging, attacking, defending, and fighting, is so much altered within the last threescore years, that no man, observing the discipline that was then thought to be the best, could possibly defend himself against that which has been since found out,

though the terms are still the same. And if it be considered, that political matters are subject to the same mutations (as certainly they are) it will be sufficient to excuse our ancestors, who, suiting their government to the ages in which they lived, could neither foresee the changes that might happen in future generations, nor appoint remedies for the mischiefs they did not foresee.

They knew that the kings of several nations had been kept within the limits of the law, by the virtue and power of a great and brave nobility; and that no other way of supporting a mixed monarchy had ever been known in the world, than by putting the balance into the hands of those who had the greatest interest in nations, and who by birth and estate enjoyed greater advantages than kings could confer upon them for rewards of betraying their country. They knew that when the nobility was so great as not easily to be numbered, the little that was left to the king's disposal, was not sufficient to corrupt many; and if some might fall under the temptation, those who continued in their integrity, would easily be able to chastise them for deserting the public cause, and by that means deter kings from endeavouring to seduce them from their duty. Whilst things continued in this posture, kings might safely be trusted (with the advice of their council) to confer the commands of the militia in towns and provinces upon the most eminent men in them; and whilst those kings were exercised in almost perpetual wars, and placed their glory in the greatness of the actions they

atchieved by the power and valour of their people, it was their interest always to chuse such as seemed best to deserve that honour. It was not to be imagined, that through the weakness of some, and malice of others, those dignities should by degrees be turned into empty titles, and become the rewards of the greatest crimes, and the vilest services; or that the noblest of their descendants, for want of them, should be brought under the name of commoners, and deprived of all privileges except such as were common to them with their grooms. Such a stupenduous change being in process of time insensibly introduced, the foundations of that government, which they had established, were removed, and the superstructure overthrown. The balance by which it subsisted was broken; and it is as impossible to restore it, as for most of those who at this day go under the name of noblemen, to perform the duties required from the ancient nobility of England. And though there were a charm in the name, and those who have it, should be immediately filled with a spirit like to that which animated our ancestors, and endeavour to deserve the honours they possess, by such services to the country as they ought to have performed before they had them, they would not be able to accomplish it. They have neither the interest nor the estates required for so great a work. Those who have estates at a rack-rent, have no dependants. Their tenants, when they have paid what is agreed, owe them nothing; and knowing they shall be turned out of their tenements, as soon as any other will give a little more, they look upon their

lords as men, who receive more from them than they confer upon them. This dependance being lost, the lords have only more money to spend or lay up than others, but no command of men; and can, therefore, neither protect the weak, nor curb the insolent. By this means, all things have been brought into the hands of the king, and the commoners; and there is nothing left to cement them, and to maintain the union. The perpetual jarrings we hear every day, the division of the nation into such factions, as threaten us with ruin, and all the disorders that we see or fear, are the effects of this rupture. These things are not to be imputed to our original constitutions, but to those who have subverted them: and if they who by corrupting, changing, enervating, and annihilating the nobility, which was the principal support of the ancient regular monarchy, have driven those who are truly noblemen into the same interest and name with the commons, and by that means increased a party which never was, and I think never can be, united to the court, they are to answer for the consequences; and if they perish, their destruction is from themselves.

The inconveniences, therefore, proceed not from the institution, but from the innovation. The law was plain, but it has been industriously rendered perplex: they who were to have upheld it are overthrown. That which might have been easily performed when the people was armed, and had a great, strong, virtuous, and powerful nobility to lead them, is made difficult, now they are disarmed, and that

nobility abolished. Our ancestors may evidently appear, not only to have intended well, but to have taken a right course to accomplish what they intended. This had effect as long as the cause continued: and the only fault that can be ascribed to that which they established is, that it has not proved to be perpetual; which is no more than may be justly said of the best human constitutions, that ever have been in the world. If we will be just to our ancestors, it will become us in our time rather to pursue what we know they intended, and by new constitutions to repair the breaches made upon the old, than to accuse them of the defects that will forever attend the actions of men. Taking our affairs at the worst, we shall soon find, that if we have the same spirit they had, we may easily restore our nation to its ancient liberty, dignity, and happiness; and if we do not, the fault is owing to ourselves, and not to any want of virtue and wisdom in them.

SECTION XXXVIII.

THE POWER OF CALLING AND DISSOLVING PARLIAMENTS IS NOT SIMPLY IN THE KING. THE VARIETY OF CUSTOMS IN CHUSING PARLIAMENT-MEN, AND THE ERRORS A PEOPLE MAY COMMIT, NEITHER PROVE, THAT KINGS ARE OR OUGHT TO BE ABSOLUTE.

THE original of magisterial power, the intention of our ancestors in its creation, and the ways prescribed for the direction and limitation of it may, I presume, sufficiently appear, by what has been said. But because our author, taking hold of every twig, pretends, "that kings may call and dissolve parliaments at their pleasure," and from thence infers "the power to be wholly in them;" alledges "the various customs in several parts of this nation used in the elections of parliament-men, to proceed from the king's will:" and "because a people may commit errors," thinks "all power ought to be put into the hands of the king:"

I answer, 1. That the power of calling and dissolving parliaments is not simply in kings. They may call parliaments, if there be occasion, at times when the law does not exact it; they are placed as centinels, and ought vigilantly to observe the motions of the enemy, and give notice of his approach:

but if the centinel fall asleep, neglect his duty, or maliciously endeavour to betray the city, those who are concerned may make use of all other means to know their danger, and to preserve themselves. The ignorance, incapacity, negligence, or luxury of a king, is a calamity to a nation, and his malice is worse, but not an irreparable ruin. Remedies may be, and often have been, found against the worst of their vices. The last French kings, of the races of Meroveus and Pepin, brought many mischiefs upon the kingdom, but the destruction was prevented. Edward and Richard, the Seconds, of England, were not unlike them, and we know by what means the nation was preserved. The question was not who had the right, or who ought to call parliaments, but how the commonwealth might be saved from ruin. The consuls, or other chief magistrates in Rome, had certainly a right of assembling and dismissing the senate; but when Hannibal was at the gates, or any other imminent danger threatened them with destruction, if that magistrate had been drunk, mad, or gained by the enemy, no wise man can think, that formalities were to have been observed. In such cases every man is a magistrate; and he who best knows the danger, and the means of preventing it, has a right of calling the senate or people to an assembly. The people would, and certainly ought, to follow him, as they did Brutus and Valerius against Tarquin, or Horatio and Valerius against the decemviri; and whoever should do otherwise, might, for sottishness, be compared to the courtiers of the two last kings of Spain. The first of these,

by name Philip the Third, being indisposed in cold weather, a braziero of coals was brought into his chamber, and placed so near to him, that he was cruelly scorched. A nobleman, then present, said to one who stood by him, "The king burns;" the other answered, it was true, but the page whose office it was to bring and remove the braziero, was not there; and before he could be found, his majesty's legs and face were so burnt, that it caused an erysipelas, of which he died. Philip the Fourth escaped not much better, who being surprised as he was hunting by a violent storm of rain and hail, and no man presuming to lend the king a cloak, he was so wet before the officer could be found that carried his own, that he took a cold, which cast him into a dangerous fever. If kings like the consequences of such a regularity, they may cause it to be observed in their own families; but nations, looking in the first place to their own safety, would be guilty of the most extreme stupidity, if they should suffer themselves to be ruined for adhering to such ceremonies.

This is said upon a supposition, that the whole power of calling and dissolving parliaments is, by the law, placed in the king: but I utterly deny that it is so; and to prove it, shall give the following reasons.

(1.) That the king can have no such power, unless it be given to him; for every man is originally free; and the same power that makes him king, gives him all that belongs to his being king. It is

not, therefore, an inherent, but a delegated, power; and whoever receives it, is accountable to those that gave it; for, as our author is forced to confess, "they who give authority by commission, do always retain more than they grant."

(2.) The law for annual parliaments expressly declares it not to be in the king's power, as to the point of their meeting, nor consequently their continuance. For they meet to no purpose, if they may not continue to do the work for which they meet; and it were absurd to give them a power of meeting, if they might not continue till it be done: for, as Grotius says, "*Qui dat finem, dat media ad finem necessaria.*" The only reason why parliaments do meet, is to provide for the public good; and they by law ought to meet for that end. They ought not, therefore, to be dissolved till it be accomplished. For this reason the opinion given by Tresilian, that kings might dissolve parliaments at their pleasure, was judged to be a principal part of his treason.

(3.) We have already proved, that Saxons, Danes, Normans, &c. who had no title to the crown, were made kings by micklegemots, wittenagemots, and parliaments; that is, either by the whole people, or their representatives; others have been by the same authority restrained, brought to order, or deposed. But as it is impossible, that such as were not kings, and had no title to be kings, could by virtue of a kingly power, call parliaments, when they had none; and absurd to think, that such as were in the throne,

who had not governed according to law, would suffer themselves to be restrained, imprisoned, or deposed by parliaments, called and sitting by themselves, and still depending upon their will to be, or not to be; it is certain that parliaments have in themselves a power of sitting and acting for the public good.

2. To the second. The various customs used in elections are nothing to the question. In the counties, which make up the body of the nation, all freeholders have their votes; these are properly "*cives*," members of the commonwealth, in distinction from those who are only "*incolæ*," or inhabitants, villains, and such as being under their parents, are not yet "*sui juris*." These, in the beginning of the Saxons' reign in England, composed the micklegemots; and when they grew to be so numerous, that one place could not contain them, or so far dispersed, that without trouble and danger they could not leave their habitations, they deputed such as should represent them. When the nation came to be more polished, to inhabit cities and towns, and to set up several arts and trades; those who exercised them, were thought to be as useful to the commonwealth, as the freeholders in the country, and to deserve the same privileges. But it not being reasonable, that every one should in this case do what he pleased; it was thought fit, that the king with his council (which always consisted of the "*proceres*" and "*magnates regni*") should judge what numbers of men, and what places deserve to be made corporations, or bodies politic, and to enjoy those privile-

ges, by which he did not confer upon them any thing that was his; but, according to the trust reposed in him, did dispense out of the public stock parcels of what he had received from the whole nation: and whether this was to be enjoyed by all the inhabitants, as in Westminister; by the common hall, as in London; or by the mayor, aldermen, jurats, and corporation, as in other places, it is the same thing; for in all these cases the king does only distribute, not give; and under the same condition that he might call parliaments, that is, for the public good. This indeed increases the honour of the person intrusted, and adds weight to the obligation incumbent upon him; but can never change the nature of the thing, so as to make that an inherent, which is only a delegated, power. And as parliaments, when occasion required, have been assembled, have refused to be dissolved till their work was finished, have severely punished those who went about to persuade kings, that such matters depended absolutely upon their will, and made laws to the contrary; it is not to be imagined, that they would not also have interposed their authority in matters of charters, if it had been observed, that any king had notoriously abused the trust reposed in him, and turned the power to his private advantage, with which he was intrusted for the public good.

That which renders this most plain and safe, is, that men chosen in this manner to serve in parliament, do not act by themselves, but in conjunction with others, who are sent thither by prescription; nor

by a power derived from kings, but from those that choose them. If it be true, therefore, that those who delegate powers, do always retain themselves more than they give, they who send these men, do not give them an absolute power of doing whatsoever they please, but retain to themselves more than they confer upon their deputies: they must, therefore, be accountable to their principals, contrary to what our author asserts. This continues in force, though he knows not, that "any knights and burgesses, have ever been questioned by those that sent them;" for it cannot be concluded they ought not, or may not, be questioned, because none have been questioned. But in truth they are frequently questioned: the people do perpetually judge of the behaviour of their deputies. Whensoever any of them has the misfortune not to satisfy the major part of those that chose him, he is sure to be rejected with disgrace the next time he shall desire to be chosen. This is not only a sufficient punishment for such faults, as he who is but one of five hundred may probably commit, but as much as the greatest and freest people of the world did ever inflict upon their commanders, that brought the greatest losses upon them. Appius Claudius, Pomponius, and Terrentius Varro, survived the greatest defeats that ever the Romans suffered; and though they had caused them by their folly and perverseness, were never punished. Yet I think no man doubts, that the Romans had as much right over their own officers, as the Athenians and Carthaginians, who frequently put them to death. They thought the mind of a commander would be

too much distracted, if at the same time he should stand in fear both of the enemy, and his own countrymen: and as they always endeavoured to chuse the best men, they would lay no other necessity upon them of performing their duty, than what was suggested by their own virtue, and love to their country. It is not, therefore, to be thought strange, if the people of England have followed the most generous and most prosperous examples. Besides, if any thing has been defective in their usual proceedings with their delegates, the inconvenience has been repaired by the modesty of the best and wisest of them that were chosen. Many in all ages, and sometimes the whole body of the commons, have refused to give their opinion in some cases, till they had consulted with those that sent them: the houses have been often adjourned to give them time to do it; and if this were done more frequently, or that the towns, cities, and counties, had on some occasons given instructions to their deputies, matters would probably have gone better in Parliament than they have often done.

3. The question is not, whether the Parliament be impeccable or infallible, but whether an assembly of nobility, with a house of commons composed of those who are best esteemed by their neighbours in all the towns and counties of England, are more or less subject to error or corruption, than such a man, woman, or child, as happens to be next in blood to the last king. Many men do usually see more than one; and if we may believe the wisest

king, "In the multitude of counsellors there is safety."* Such as are of mature age, good experience, and approved reputation for virtue and wisdom, will probably judge better than children or fools. Men are thought to be more fit for war than women; and those who are bred up in discipline, to understand it better than those who never knew any thing of it. If some counties or cities fail to chuse such men as are eminently capable, all will hardly be so mistaken as to chuse those who have no more wisdom or virtue, than is usually entailed upon families. But Filmer, at a venture, admires the profound wisdom of a king; though, besides such as we have known, histories give us too many proofs, that all those who have been possessed of crowns have not excelled that way. He speaks of kings in general, and makes no difference between Solomon and his foolish son. He distinguishes not our Edward the First from Edward the Second; Edward the Third from Richard the Second; or Henry the Fifth from Henry the Sixth. And because all of them were kings, all of them, if he deserves credit, must needs have been endowed with profound wisdom. David was wise as an angel of God; therefore the present kings of France, Spain, and Sweden, must have been so also, when they were but five years old; Joan of Castile could not be mad, nor the two Joans of Naples infamous strumpets, or else all his arguments fall to the ground. For though Solomon's wisdom surpassed that of all the people,

* Prov. xi. 14.

yet men could not rely upon that of Rehoboam, unless it had been equal. And if they are all equal in wisdom when they come to be equally kings, Perses of Macedon was as great a captain as Philip or Alexander; Commodus and Heliogabalus were as wise and virtuous as Marcus Aurelius and Antoninus Pius: nay, Christina of Sweden in her infancy was as fit to command an army as her valiant father. If this be most absurd and false, there can be neither reason nor sense in proposing, as our author does, that the power should be in the king, because the Parliament is not infallible. "It is," says he, "for the head to correct, and not to expect the consent of the members or parties pecant to be judges in their own cases, nor is it needful to confine the king," &c. Besides that this is directly contrary to his own fundamental maxim, that no man must be the judge of his own case, inasmuch as this would put the power into the king's hands, to decide the controversies between himself and the people, in which his own passions, private interest, and the corrupt councils of ill ministers, will always lead him out of the way of justice, the inconveniences that may arise from a possibility that the Parliament or people is not infallible, will be turned to the most certain and destructive mischiefs; as must have fallen out in Spain, if, upon a supposition that the estates of Castile might err, the correction of such errors had been left to the profound wisdom, and exquisite judgment, of Joan their queen and head, who was stark-mad. And the like may be said of many other princes, who through natural or accidental infirmities, want of age, or

dotage, have been utterly unable to judge of any thing.

The matter will not be much mended, though I pass from ideots and lunatics, to such as know well enough how to cloathe and feed themselves, and to perform the ordinary functions of life; and yet have been as uncapable of giving a right judgment concerning the weighty matters of government, as the weakest of children, or the most furious of madmen. Good manners forbid me to enumerate the examples of this kind, which Europe has produced, even in this age; but I should commit even a greater fault if I did in silence pass over the extravagances of those, who being weak in judgment, and irregular in their appetites, have been most impatient of any restraint upon their will. The brave Gustavus Adolphus, and his nephew Carolus Gustavus, who was not inferior to him in valour, wisdom, and love to his people, were content with the power that the laws of their country gave to them; but Frederic the Fourth of Denmark never rested till he had overthrown the liberty of that nation. Casimir, by attempting the like in Poland, lost almost half of that kingdom; and flying from the other, left all to be ravaged by Swedes, Tartars, and Cosacks. The present emperor, who passed his time in setting songs in music with a wretched Italian eunuch, when he ought to have been at the head of a brave army, raised to oppose the Turks in the year 1664; and which under good conduct might have over-

thrown the Ottoman Empire, as soon as he was delivered from the fear of that enemy, fell upon his own subjects with such cruelty, that they are now forced to fly to the Turks for protection; the Protestants especially, who find their condition more tolerable under those professed enemies to christianity, than to be exposed to the pride, avarice, perfidiousness, and violence, of the Jesuits, by whom he is governed. And the qualities of the king of Portugal are so well known, together with the condition to which he would have brought his kingdom if he had not been sent to the Tercera's, that I need not speak particularly of him.

If kings, therefore, by virtue of their office, are constituted judges over the body of their people, because the people, or parliaments representing them, are not infallible; those kings who are children, fools, disabled by age, or madmen, are so also; women have the same right, where they are admitted to the succession; those men, who though of ripe age, and not superannuated, nor directly fools or madmen, yet absolutely uncapable of judging important affairs, or by their passions, interests, vices, or malice and wickedness of their ministers, servants, and favourites, are set to oppress and ruin the people, enjoy the same privilege; than which nothing can be imagined more absurd and abominable, nor more directly tending to the corruption and destruction of the nations under them, for whose good and safety our author confesses they have their power.

SECTION XXXIX.

THOSE KINGS ONLY ARE HEADS OF THE PEOPLE, WHO ARE GOOD, WISE, AND SEEK TO ADVANCE NO INTEREST BUT THAT OF THE PUBLIC.

The worst of men seldom arrive to such a degree of impudence, as plainly to propose the most mischievous follies and enormities. They who are enemies to virtue, and fear not God, are afraid of men, and dare not offer such things as the world will not bear, lest by that means they should overthrow their own designs. All poison must be disguised, and no man can be persuaded to eat arsenic, unless it be covered with something that appears to be harmless. Creusa would have abhorred Medea's present, if the pestilent venom had not been hidden by the exterior lustre of gold and gems. The garment that destroyed Hercules appeared beautiful; and Eve had neither eaten of the forbidden tree, or given the fruit to her husband, if it had not seemed to be good and pleasant, and had she not been induced to believe that by eating it they should both be as gods. The servants of the devil have always followed the same method: their malice is carried on by fraud, and they have seldom destroyed any, but such as they had first deceived. Truth can never conduce to mischief, and is best discovered by plain words; but nothing is more usual with ill men, than to cover their mis-

chievous designs with figurative phrases. It would be too ridiculous to say in plain terms, that all kings, without distinction, are better able to judge of all matters than any or all their people; they must therefore be called the head, that thereby they may be invested with all the pre-eminences which in a natural body belong to that part; and men must be made to believe the analogy between the natural and political body to be perfect. But the matter must be better examined before this mortal poison seems fit to be swallowed.

The word "head," is figuratively used both in scripture and profane authors in several senses, in relation to places or persons, and always implies something of real or seeming pre-eminence in point of honour or jurisdiction. Thus Damascus is said to be the head of Syria; Samaria of Ephraim, and Ephraim of the ten tribes; that is, Ephraim was the chief tribe; Samaria was the chief city of Ephraim, and Damascus of Syria; though it be certain, that Ephraim had no jurisdiction over the other tribes, nor Samaria over the other cities of Ephraim, but every one according to the law had an equal power within itself, or the territories belonging to it; and no privileges were granted to one above another, except to Jerusalem, in the matter of religion, because the temple was placed there.

The words also head, prince, principal man, or captain, seem to be equivocal; and in this sense, the same men are called heads of the tribes, princes in the

houses of their fathers:* and it is said, that two hundred heads of the tribe of Reuben were carried away captive by Tiglath Pilezer, and proportionably in the other tribes; which were a strange thing, if the word did imply that supreme, absolute, and infinite power, that our author attributes to it; and no man of less understanding than he, can comprehend how there should be two hundred or more sovereign, unlimitted powers in one tribe, most especially when it is certain, that one series of kings had for many ages reigned over that tribe and nine more; and that every one of those tribes, as well as the particular cities, even from their first entrance into the promised land, had a full jurisdiction within itself. When the Gileadites came to Jephtha, he suspected them, and asked whether indeed they intended to make him their head? They answered, if he would lead them against the Ammonites, he should be their head.† In the like sense, when Julius Cæsar in despair would have killed himself, one of his soldiers dissuaded him from that design, by telling him, ‡ "That the safety of so many nations, that had made him their head, depending upon his life, it would be cruelty in him to take such a resolution." But for all that, when this head was taken off, the body did still subsist: upon which I observe many fundamental differences, between the relation of this

* 1 Chron. v. † Judg. xii.

‡ Cum tot ab hac anima populorum vita salusque
Pendeat, & tantus caput hoc sibi feceret orbis,
Sævitia est volume moti. LUCAN.

figurative head (even when the word is rightly applied) and that of the natural head to their respective bodies.

The figurative heads may be many, the natural but one.

The people make or create the figurative head; the natural is from itself, or connate with the body.

The natural body cannot change or subsist without the natural head; but a people may change and subsist very well without the artificial. Nay, if it had been true, that the world had chosen Cæsar, as it was not (for he was chosen only by a factious, mercenary army, and the soundest part so far opposed that election, that they brought him to think of killing himself) there could have been no truth in this flattering assertion, "That the safety of the whole depended upon his life:" for the world could not only usbsist without him, but without any such head, as it had done, before he by the help of his corrupted soldiery had usurped the power; which also shews that a civil head may be a matter of convenience, but not of necessity. Many nations have had none; and if the expression be so far stretched, as to make it extend to the annual or temporary magistrates set up by the Athenians, Carthaginians, Romans, and other ancient commonwealths, or to those at this day in Venice, Holland, Switzerland, and other places, it must be confessed, that the people who made, deposed, abrogated, or abolished, both the magistrates

and magistracies, had the power of framing, directing, and removing their heads, which, our author will say, is most absurd. Yet they did it without any prejudice to themselves, and very often much to their advantage.

In mentioning these vast and essential differences between the natural and political head, I no way intend to exclude others, that may be of equal weight; but as all figurative expressions have their strength only from similitude, there can be little or none in this, which differs in so many important points, and can therefore be of no effect.

However, right proceeds from identity, and not from similitude. The right of a man over me is by being my father, and not by being like my father. If I had a brother so perfectly resembling me, as to deceive our parents, which has sometimes happened to twins, it could give him no right to any thing that is mine. If the power, therefore, of correcting the parties peccant, which our author attributes to kings, be grounded upon the name of head, and a resemblance between the heads of the body politic and body natural; if this resemblence be found to be exceedingly imperfect, uncertain, or perhaps no way relating to the matter in question; or though it did, and were absolutely perfect, could confer no right; the allegation of it is impertinent and absurd.

This being cleared, it is time to examine, what the office of the head is in a natural body, that we

may learn from thence, why that name is sometimes given to those who are eminent in political bodies, and to whom it does belong.

Some men account the head to be so absolutely the seat of all the senses, as to derive even that of feeling, which is exercised in every part, from the brain; but I think it is not doubted that all the rest have both their seat and function in the head; and whatsoever is useful or hurtful to a man, is by them represented to the understanding; as Aristotle says, *Nihil est intellectu, quod non sit prius in sensu.*" This is properly the part of every magistrate: he is the sentinel of the public, and is to represent what he discovers beneficial or hurtful to the society; which office belongs not only to the supreme, but proportionably to the subordinate. In this sense were the chief men among the Israelites called "heads of their father's house, choice and mighty men of valour, chiefs of the princes."* And in the following chapter mention is made of "nine hundred and fifty Benjamites, chief men in the house of their fathers." These men exercised a charitable care over such as were inferior to them in power and valour, without any shadow of sovereignty, or possibility that there could be so many sovereigns: and such as were under their care are said to be their brethren; which is not a word of majesty and domination, but of dearness and equality. The name, therefore, of head, may be given to a sovereign, but

* 1 Chron. vii. 40.

it implies nothing of sovereignty; and must be exercised with charity, which always terminates in the good of others. The head cannot correct or chastise; the proper work of that part is only to indicate; and he who takes upon him to do more is not the head. A natural body is homogeneous, and cannot subsist, if it be not so. We cannot take one part of a horse, another of a bear, and put upon them the head of a lion; for it would be a monster, that would have neither action nor life. The head must be of the same nature with the other members, or it cannot subsist. But the lord or master differs in species from his servants and slaves: he is not, therefore, properly their head.

Besides, the head cannot have a subsistence without the body, nor any interest contrary to that of the body; and it is impossible for any thing to be good for the head, that is hurtful to the body. A prince, therefore, or magistrate, who sets up an interest in himself distinct from, or repugnant to, that of the people, renounces the title or quality of their head. Indeed, Moses was the head of the Israelites: for when God threatened to destroy that people, and promised to make him a great nation, he waved the particular advantages offered to himself, interceded for them, and procured their pardon. Yet he was not able to bear the weight of the government alone; but desired that some might be appointed to assist him. Gideon was the head of the same people; but he would not reign himself, nor suffer his sons to

reign over them. Samuel was also their head; he took nothing from any man, defrauded none, took bribes from no man, oppressed none; God and the people were his witnesses; he blamed them for their rebellion against God in asking a king, but was no way concerned for himself, or his family. David likewise had a right to that title; for he desired, that God would spare the people, and turn the effect of his anger against himself, and the house of his father. But Rehoboam was not their head; for though he acknowledged, that his father had laid a heavy yoke upon them, yet he told them he would add to the weight; and that if his father had chastised them with whips, he would chastise them with scorpions. The head is no burden to the body, and can lay none upon it; the head cannot chastise any member; and he who does so, be it more or less, cannot be the head. Jeroboam was not the head of the revolting tribes; for the head takes care of the members, and to provide for the safety of the whole; but he, through fear that the people going to Jerusalem to worship should return to the house of David, by setting up idols to secure his own interests drew guilt and destruction upon them. Though it should be granted, that Augustus, by a gentle use of his power, had in a manner expiated the detestable villanies committed in the acquisition, and had truly deserved to be called the head of the Romans; yet that title could no way belong to Caligula, Claudius, Nero, or Vitellius, who neither had the qualities required in the head, nor the understanding or will to perform the office. Nay, if I should carry the matter father, and

acknowledge that Brutus, Cincinnatus, Fabius, Camillus, and others, who, in the time of their annual or shorter magistracies, had by their vigilance, virtue, and care to preserve the city in safety, and to provide for the public good, performed the office of the head, and might deserve the name; I might justly deny it to the greatest princes that have been in the world, who having their power for life, and leaving it to descend to their children, have wanted the virtues required for the performance of their duty; and I should less fear to be guilty of an absurdity in saying, that a nation might every year change its head, than that he can be the head, who cares not for the members, nor understands the things that can conduce to their good, most especially if he set up an interest in himself against them. It cannot be said, that these are imaginary cases, and that no prince does these things; for the proof is too easy, and the examples too numerous. Caligula could not have wished the Romans but one head, that he might cut it off at once, if he had been that head, and had advanced no interest contrary to that of the members. Nero had not burned the city of Rome, if his concernments had been inseparably united to those of the people. He who caused above three hundred thousand of his innocent, unarmed subjects, to be murdered, and filled his whole kingdom with fire and blood, did set up a personal interest repugnant to that of the nation; and no better testimony can be required to shew that he did so, than a letter written by his son, to take off the penalty due to one of the chief ministers of those cruelties, for this reason,

that what he had done, was "by the command, and for the service of his royal father." King John did not pursue the advantage of his people, when he endeavoured to subject them to the Pope, or the Moors. And whatever prince seeks assistance from foreign powers, or makes leagues with any stranger or enemy for his own advantage against his people, however secret the treaty may be, declares himself not to be the head, but an enemy to them. The head cannot stand in need of an exterior help against the body, nor subsist when divided from it. He, therefore, that courts such an assistance, divides himself from the body; and if he do subsist, it must be by a life he has in himself distinct from that of the body, which the head cannot have.

But besides these enormities, that testify the most wicked rage and fury, in the highest degree, there is another practice, which no man that knows the world, can deny to be common with princes, and incompatible with the nature of a head. The head cannot desire to draw all the nourishment of the body to itself, nor more than a due proportion. If the rest of the parts are sick, weak, or cold, the head suffers equally with them; and, if they perish, must perish also. Let this be compared with the actions of many princes we know, and we shall soon see which of them are heads of the people If the gold brought from the Indies, has been equally distributed by the kings of Spain to the body of that nation, I consent they may be called the heads. If the kings of France assume no more of the riches of

that great kingdom, than their due proportion, let them also wear that honourable name. But if the naked backs, and empty bellies, of their miserable subjects evince the contrary, it can by no means belong to them. If those great nations waste and languish; if nothing be so common in the best provinces belonging to them, as misery, famine, and all the effects of the most outrageous oppression, whilst their princes and favourites possess such treasures, as the most wanton prodigality cannot exhaust; if that which is gained by the sweat of so many millions of men, be torn out of the mouths of their starving wives and children, to foment the vices of those luxurious courts, or reward the ministers of their lusts, the nourishment is not distributed equally to all the parts of the body; the œconomy of the whole is overthrown; and they who do these things cannot be the heads, nor parts of the body, but something distinct from, and repugnant to it. It is not, therefore, he who is found in, or advanced to, the place of the head, who is truly the head; it is not he who ought, but he who does perform the office of the head, that deserve the name and privileges belonging to the head. If our author, therefore, will persuade us, that any king is head of his people, he must do it by arguments peculiarly relating to him, since those in general are found to be false. If he say, that the king, as king, may direct or correct the people, and that the power of determining all controversies must be referred to him, because they may be mistaken, he must shew that the king is infallible; for unless he do so, the wound is not cured. This

also must be by some other way, than by saying he is their head; for such powers belong not to the office of the head, and we see, that all kings do not deserve that name: many of them want both understanding and will to perform the functions of the head; and many act directly contrary, in the whole course of their government. If any, therefore, among them have merited the glorious name of heads of nations, it must have been by their personal virtues, by a vigilant care of the good of their people, by an inseparable conjunction of interests with them, by an ardent love to every member of the society, by a moderation of spirit, affecting no undue superiority, or assuming any singular advantage, which they are not willing to communicate to every part of the political body. He who finds this merit in himself, will scorn all the advantages that can be drawn from misapplied names: he that knows such honour to be peculiarly due to him for being the best of kings, will never glory in that which may be common to him with the worst. Nay, whoever pretends by such general discourses as these of our author, to advance the particular interests of any one king, does either know he is of no merit, and that nothing can be said for him, which will not as well agree with the worst of men; or cares not what he says, so he may do mischief; and is well enough contented, that he who is set up by such maxims as a public plague, may fall in the ruin he brings upon the people.

SECTION XL.

GOOD LAWS PRESCRIBE EASY AND SAFE REMEDIES AGAINST THE EVILS PROCEEDING FROM THE VICES OR INFIRMITIES OF THE MAGISTRATE; AND WHEN THEY FAIL, THEY MUST BE SUPPLIED.

THOSE who desire to advance the power of the magistrate above the law, would persuade us, that the difficulties and dangers of inquiring into his actions, or opposing his will, when employed in violence and injustice, are so great, that the remedy is always worse than the disease; and that it is better to suffer all the evils that may proceed from his infirmities and vices, than to hazard the consequences of displeasing him. But, on the contrary, I think, and hope to prove,

1. That in well-constituted governments, the remedies against ill magistrates are easy and safe.

2. That it is good, as well for the magistrate as the people, so to constitute the government, that the remedies may be easy and safe.

3. That how dangerous and difficult soever they may be, through the defects of the first constitution, they must be tried.

To the first: it is most evident, that in well regulated governments these remedies have been found to be easy and safe. The kings of Sparta were not suffered in the least to deviate from the rule of the law: and Theopompus, one of those kings in whose time the ephori were created, and the regal power much restrained, doubted not to affirm, that it was by that means become more lasting, and more secure. *Pausanias had not the name of king, but commanded in the war against Xerxes with more than regal power: nevertheless, being grown insolent, he was, without any trouble to that state, banished, and afterwards put to death. Leontidas, father of Cleomenes, was in the like manner banished. The second Agis was most unjustly put to death by the ephori; for he was a brave and a good prince; but their was neither danger nor difficulty in the action. Many of the Roman magistrates, after the expulsion of the kings, seem to have been desirous to extend their power beyond the bounds of the law; and perhaps some others, as well as the decemviri, may have designed an absolute tyranny; but the first were restrained, and the others without much difficulty suppressed. Nay, even the kings were so well kept in order, that no man ever pretended to the crown, unless he were chosen, nor made any other use of his power than the law permitted, except the last Tarquin, who by his insolence, avarice, and cruelty, brought ruin upon himself and his family. I have already mentioned one or two dukes of Ven-

* Plutarch.

ice, who were not less ambitious: but their crimes returned upon their own heads, and they perished without any other danger to the state, than what had passed before their treasons were discovered. Infinite examples of the like nature may be alledged; and if matters have not at all times, and in all places, succeeded in the same manner, it has been because the same courses were not every where taken; for all things do so far follow their causes, that, being ordered in the same manner, they will always produce the same effects.

2. To the second: such a regulation of the magistratical power is not at all grievous to a good magistrate. He who never desires to do any thing but what he ought, cannot desire a power of doing what he ought not, nor be troubled to find he cannot do that which he would not do if he could. This inability is also advantageous to those who are evil or unwise; that since they cannot govern themselves, a law may be imposed upon them, lest by following their own irregular will, they bring destruction upon themselves, their families, and people, as many have done. If Apollo in the fable had not been too indulgent to Phæton, in granting his ill-conceived request, the furious youth had not brought a necessity upon Jupiter, either of destroying him, or suffering the world to be destroyed by him.

Besides, good and wise men know the weight of sovereign power, and misdoubt their own strength.

Sacred and human histories furnish us with many examples of those who have feared the lustre of a crown. Men that find in themselves no delight in doing mischief, know not what thoughts may insinuate into their minds, when they are raised too much above their sphere. They who were able to bear adversity, have been precipitated into ruin by prosperity. When the prophet told Hazael the villanies he would commit, he answered, "Is thy servant a dog, that I should do these things?" but yet he did them. I know not where to find an example of a man more excellently qualified, than Alexander of Macedon; but he fell under the weight of his own fortune, and grew to exceed those in vice, whom he had conquered by his virtue. The nature of man can hardly suffer such violent changes, without being disordered by them; and every one ought to enter into a just diffidence of himself, and fear the temptations that have destroyed so many. If any man be so happily born, so carefully educated, so established in virtue, that no storm can shake him, nor any poison corrupt him, yet he will consider he is mortal; and knowing no more than Solomon, whether his son shall be a wise man or a fool, he will always fear to take upon him a power, which must prove a most pestilent evil both to the person that has it, and to those that are under it, as soon as it shall fall into the hands of one who either knows not how to use it, or may be easily drawn to abuse it. Supreme magistrates always walk in obscure and slippery places: but when they are advanced so high, that no one is near enough to support, direct,

or restrain them, their fall is inevitable and mortal. And those nations that have wanted the prudence rightly to balance the powers of their magistrates, have been frequently obliged to have recourse to the most violent remedies, and with much difficulty, danger, and blood, to punish the crimes which they might have prevented. On the other side, such as have been more wise in the constitution of their governments, have always had regard to the frailty of human nature, and the corruption reigning in the hearts of men; and being less liberal of the power over their lives and liberties, have reserved to themselves so much, as might keep their magistrates within the limits of the law, and oblige them to perform the ends of their institution. And as the law which denounces severe penalties for crimes, is indeed merciful both to ill men, who are by that means deterred from committing them; and to the good, who otherwise would be destroyed; so those nations that have kept the reigns in their hands, have by the same act provided as well for the safety of their princes, as for their own. They who know the law is well defended, seldom attempt to subvert it: they are not easily tempted to run into excesses, when such bounds are set, as may not safely be transgressed; and whilst they are by this means rendered more moderate in the exercise of their power, the people is exempted from the odious necessity of suffering all manner of indignities and miseries, or by their destruction to prevent or avenge them.

3. To the third: if these rules have not been well observed in the first constitution, or from the changes

of times, corruption of manners, insensible encroachments, or violent usurpations of princes, have been rendered ineffectual, and the people exposed to all the calamities that may be brought upon them by the weakness, vices, and malice of the prince, or those who govern him, I confess the remedies are more difficult and dangerous: but even in those cases they must be tried. Nothing can be feared that is worse than what is suffered, or must in a short time fall upon those who are in this condition. They who are already fallen into all that is odious, shameful, and miserable, cannot justly fear. When things are brought to such a pass, the boldest counsels are the most safe; and if they must * perish who lie still, and they can but perish who are most active, the choice is easily made. Let the danger be never so great, there is a possibility of safety, whilst men have life, hands, arms, and courage to use them; but that people must certainly perish, who tamely suffer themselves to be oppressed, either by the injustice, cruelty, and malice of an ill magistrate, or by those who prevail upon the vices and infirmities of weak princes. It is in vain to say, that this may give occasion to men of raising tumults, or civil war; for though these are evils, yet they are not the greatest of evils. Civil war, in Machiavel's account, is a disease; but tyranny is the death of a state. Gentle

* Moriendum victis, moriendum deditis; id solum interest, an inter crutiatus & ludibria, an pro virtutem expiremus
C. Tacit.

Quod si nocentes innocentesque; idem exitus maneat, acrioris viri est merito perire. Ibid.

ways are first to be used, and it is best if the work can be done by them; but it must not be left undone, if they fail. It is good to use supplications, advices, and remonstrances; but those who have no regard to justice, and will not hearken to counsel, must be constrained. It is folly to deal otherwise with a man who will not be guided by reason, and a magistrate who despises the law; or rather to think him a man, who rejects the essential principle of a man; or to account him a magistrate, who overthrows the law by which he is a magistrate. This is the last result; but those nations must come to it, which cannot otherwise be preserved. Nero's madness was not to be cured, nor the mischievous effects of it any otherwise to be suppressed, than by his death. He who had spared such a monster when it was in his power to remove him, had brought destruction upon the whole empire; and by a foolish clemency made himself the author of his future villanies. This would have been yet more clear, if the world had then been in such a temper as to be capable of an intire liberty. But the ancient foundations had been overthrown, and nothing better could be built upon the new, than something that might in part resist that torrent of iniquity which had overflowed the best part of the world, and give mankind a little time to breathe under a less barbarous master. Yet all the best men did join in the work that was then to be done, though they knew it would prove but imperfect. The sacred history is not without examples of this kind; when Ahab had subverted the law, set up false witnesses and corrupt judges to destroy the innocent,

killed the prophets, and established idolatry, his house must then be cut off, and his blood be licked up by dogs. When matters are brought to this pass, the decision is easy. The question is only, whether the punishment of crimes shall fall upon one or a few persons who are guilty of them, or upon a whole nation that is innocent. If the father may not die for the son, nor the son for the father, but every one must bear the penalty of his own crimes, it would be most absurd to punish the people for the guilt of princes. When the Earl of Morton was sent ambassador to Queen Elizabeth by the estates of Scotland, to justify their proceedings against Mary their queen, whom they had obliged to renounce the government, he alledged, amongst other things, the murder of her husband plainly proved against her; asserted the ancient right and custom of the kingdom, of * examining the actions of their kings; by which means, he said, many had been † punished with death, imprisonment, and exile; confirmed their actions by the examples of other nations; and

* Animadvertendi in reges.

† Morte, vinculis, & exilio puniti. BUCHAN. hist. Scot. l. xx. Qui tot reges regno exuerunt, exilio damnarunt, carceribus coercuerunt supplicio denique; affecerunt, nec unquam tamen de acerbitate legis minuenda mentio est facta, &c. Ibid. Facile apparet regnum nihil aliud esse, quam mutuam inter regem & populum stipulationem. Non de illarum sanctionum genere, quæ mutationibus temporum sunt obnoxiæ, sed in primo generis humani exortu, et mutuo prope omnium grentium consensu comprobate & una cum rerum natura infragiles & sempiternæ perennent. Ibid.

upon the whole matter concluded, that if she was still permitted to live, it was not on account of her innocence, or any exemption from the penalties of the law, but from the mercy and clemency of the people, who, contenting themselves with a resignation of her right and power to her son, had spared her. This discourse, which is set down at large by the historian cited on the margin, being of such strength in itself as never to have been any otherwise answered than by railing, and no way disapproved by Queen Elizabeth, or her council, to whom it was made, either upon a general account of the pretensions of princes to be exempted from the penalties of the law, or any pretext that they had particularly misapplied them in relation to their queen, I may justly say, that when nations fall under such princes as are either utterly uncapable of making a right use of their power, or do maliciously abuse that authority with which they are entrusted, those nations stand obliged, by the duty they owe to themselves and their posterity, to use the best of their endeavour to remove the evil, whatever danger or difficulties they may meet with in the performance. Pontius the Samnite said as truly as bravely to his countrymen, that *"those arms were just and pious, that were necessary; and necessary, when there was no hope of safety by any other way." This is the voice of mankind, and is disliked only by those princes, who fear the deserved punishments that may

* Justa piaque; sunt arma; quibus necessaria, quibus nulla nisi in armis spes est salutis. T. Liv. lib. ix. c. 1.

fall upon them; or by their servants and flatterers, who, being for the most part the authors of their crimes, think they shall be involved in their ruin.

SECTION XLI.

THE PEOPLE, FOR WHOM AND BY WHOM THE MAGISTRATE IS CREATED, CAN ONLY JUDGE WHETHER HE RIGHTLY PERFORM HIS OFFICE OR NOT.

It is commonly said, that no man ought to be the judge of his own case; and our author lays much weight upon it as a fundamental maxim, though, according to his ordinary inconstancy, he overthrows it in the case of kings, where it ought to take place, if in any; for it often falls out, that no men are less capable of forming a right judgment than they. Their passions and interests are most powerful to disturb or pervert them. No men are so liable to be diverted from justice by the flatteries of corrupt servants. They never act as kings, except for those by whom and for whom they are created; and acting for others, the account of their actions cannot depend upon their own will. Nevertheless, I am not afraid to say, that naturally and properly a man is the judge of his own concernments. No one is or can be deprived of this

privilege, unless by his own consent, and for the good of that society into which he enters. This right, therefore, must necessarily belong to every man in all cases, except only such as relate to the good of the community, for whose sake he has divested himself of it. If I find myself afflicted with hunger, thirst, weariness, cold, heat, or sickness, it is a folly to tell me, I ought not to seek meat, drink, rest, shelter, refreshment, or physic, because I must not be the judge of my own case. The like may be said in relation to my house, land, or estate ; I may do what I please with them, if I bring no damage upon others. But I must not set fire to my house, by which my neighbour's house may be burnt. I may not erect forts upon my own lands, or deliver them to a foreign enemy, who may by that means infest my country. I may not cut the banks of the sea, or those of a river, lest my neighbour's ground be overflown, because the society into which I am incorporated, would by such means receive prejudice. My land is not simply my own, but upon condition that I shall not thereby bring damage upon the public by which I am protected in the peaceable enjoyment and innocent use of what I possess. But this society leaves me a liberty to take servants, and put them away, at my pleasure. No man is to direct me, of what quality or number they shall be, or can tell me whether I am well or ill served by them. Nay, the state takes no other cognizance of what passes between me and them, than to oblige me to perform the contracts I make, and not to do that

to them which the law forbids; that is to say, the power to which I have submitted myself, exercises that jurisdiction over me, which was established by my consent, and under which I enjoy all the benefits of life, which are of more advantage to me than my liberty could have been, if I had retained it wholly in myself. The nature also and the measure of this submission must be determined by the reasons that induced me to it. The society in which I live cannot subsist, unless by rule; the equality in which men are born is so perfect, that no man will suffer his natural liberty to be abridged, except others do the like: I cannot reasonably expect to be defended from wrong, unless I oblige myself to do none; nor to suffer the punishment prescribed by the law, if I perform not my engagement. But, without prejudice to the society into which I enter, I may and do retain to myself the liberty of doing what I please in all things relating peculiarly to myself, or in which I am to seek my own convenience.

Now if a private man is not subject to the judgment of any other, than those to whom he submits himself for his own safety and convenience; and, notwithstanding that submission, still retains to himself the right of ordering according to his own will all things merely relating to himself, and of doing what he pleases in that which he does for his own sake; the same right must more certainly belong to whole nations. When a controversy happens between Caius and Seius in a matter of right, neither of them may determine the cause, but it must be refer-

red to a judge superior to both; not because it is not fit that a man should be judge of his own case, but because they have both an equal right, and neither of them owes any subjection to the other. But if there be a contest between me and my servant concerning my service, I only am to decide it: he must serve me in my own way, or be gone, if I think fit, though he serve me never so well; and I do him no wrong in putting him away, if either I intend to keep no servant, or find that another will please me better. I cannot therefore stand in need of a judge, unless the contest be with one who lives upon an equal foot with me. No man can be my judge, unless he be my superior; and he cannot be my superior, who is not so by my consent, nor to any other purpose than I consent to. This cannot be the case of a nation, which can have no equal within itself. Controversies may arise with other nations, the decision of which may be left to judges chosen by mutual agreement; but this relates not to our question. A nation, and most especially one that is powerful, cannot recede from its own right; as a private man, from the knowledge of his own weakness, and inability to defend himself, must come under the protection of a greater power than his own. The strength of a nation is not in the magistrate, but the strength of the magistrate is in the nation. The wisdom, industry, and valour of a prince may add to the glory and greatness of a nation, but the foundation and substance will always be in itself. If the magistrate and people were upon equal terms, as Caius and Seius, receiving equal and mutual advantages from each other, no man could be

judge of their differences, but such as they should set up for that end. This has been done by many nations. The ancient Germans referred the decision of the most difficult matters to their priests: the Gauls and Britons to the Druids; the Mahometans for some ages to the califs of Babylon: the Saxons in England, when they had embraced the christian religion, to their clergy. Whilst all Europe lay under the Popish superstition, the decision of such matters was frequently assumed by the Pope; men often submitted to his judgment, and the princes that resisted were for the most part excommunicated, deposed, and destroyed. All this was done for the same reasons. These men were accounted holy and inspired, and the sentence pronounced by them was usually reverenced as the judgment of God, who was thought to direct them; and all those who refused to submit, were esteemed execrable. But no man, or number of men, as I think, at the institution of a magistrate, did ever say, If any difference happen between you or your successors and us, it shall be determined by yourself, or by them, whether they be men, women, children, mad, foolish, or vicious. Nay, if any such thing had been, the folly, turpitude, and madness, of such a sanction or stipulation, must necessarily have destroyed it. But if no such thing was ever known, or could have no effect, if it had been in any place, it is most absurd to impose it upon all. The people, therefore, cannot be deprived of their natural rights upon a frivolous pretence to that which never was, and never can be. They who create magistracies, and give to them such name,

form, and power, as they think fit, do only know, whether the end for which they were created be performed or not. They who give a being to the power which had none, can only judge whether it be employed to their welfare, or turned to their ruin. They do not set up one or a few men, that they and their posterity may live in splendor and greatness, but that justice may be administered, virtue established, and provision made for the public safety. No wise man will think this can be done, if those who set themselves to overthrow the law, are to be their own judges. If Caligula, Nero, Vitellius, Domitian, or Heliogabalus, had been subject to no other judgment, they would have completed the destruction of the empire. If the disputes between Durstus, Evenus the Third, Dardanus, and other kings of Scotland, with the nobility and people, might have been determined by themselves, they had escaped the punishments they suffered, and ruined the nation, as they designed. Other methods were taken; they perished by their madness; better princes were brought into their places, and their successors were by their example admonished to avoid the ways that had proved fatal to them. If Edward the Second of England, with Gaveston and the Spencers, Richard the Second, with Tresilian and Vere, had been permitted to be the judges of their own cases, they who had murdered the best of the nobility, would have pursued their designs to the destruction of such as remained, the enslaving of the nation, the subversion of the constitution, and the establishment of a mere tyranny in the place of a mixed monarchy. But our ancestors took better measures: they who had felt

the smart of the vices and follies of their princes, knew what remedies were most fit to be applied, as well as the best time of applying them. They found the effects of extreme corruption in government to be so desperately pernicious, that nations must necessarily perish, unless it be corrected, and the state reduced to its first principle, or altered. Which being the case, it was easy for them to judge, whether the governor, who had introduced that corruption, should be brought to order, and removed if he would not be reclaimed; or whether he should be suffered to ruin them and their posterity, as it is for me to judge, whether I should put away my servant, if I knew he intended to poison or murder me, and had a certain facility of accomplishing his design; or whether I should continue him in my service till he had performed it. Nay, the matter is so much the more plain on the side of the nation, as the disproportion of merit between a whole people, and one or a few men entrusted with the power of governing them, is greater than between a private man and his servant. This is so fully confirmed by the general consent of mankind, that we know no government that has not frequently either been altered in form, or reduced to its original purity, by changing the families or persons who abused the power with which they had been entrusted. Those who have wanted wisdom and virtue, rightly and seasonably to perform this, have been soon destroyed; like the Goths in Spain, who, by omitting to curb the fury of Witza and Rodrigo in time, became a prey to the Moors.*

* Mariana.

Their kingdom by this means destroyed, was never restored, and the remainder of that nation, joining with the Spaniards, whom they had kept in subjection for three or four ages, could not in less than eight hundred years, expel those enemies they might have kept out only by removing two base and vicious kings. Such nations as have been so corrupted, that when they have applied themselves to seek remedies to the evils they suffered by wicked magistrates, could not fall upon such as were proportionable to the disease, have only vented their passions in destroying the immediate instruments of their oppression, or for a while delayed their utter ruin. But the root still remaining, it soon produced the same poisonous fruit, and either quite destroyed, or made them languish in perpetual misery. The Roman empire was the most eminent example of the first; many of the monsters that had tyrannized over them were killed; but the greatest advantage gained by their death, was a respite from ruin; and the government, which ought to have been established by good laws, depending only upon the virtue of one man, his life proved to be no more than a lucid interval, and at his death they relapsed into the depth of infamy and misery; and in this condition they continued till the empire was totally subverted.

All the kingdoms of the Arabians, Medes, Persians, Moors, and others of the east, are of the other sort. Common sense instructs them, that barbarous pride, cruelty, and madness, grown to extremity, cannot be borne: but they have no other way than

to kill the tyrant, and to do the like to his successor if he fall into the same crimes. Wanting that wisdom and valour which is required for the institution of a good government, they languish in perpetual slavery, and propose to themselves nothing better than to live under a gentle master, which is but a precarious life, and little to be valued by men of bravery and spirit. But those nations that are more generous, who set a higher value upon liberty, and better understand the ways of preserving it, think it a small matter to destroy a tyrant, unless they can also destroy the tyranny. They endeavour to do the work thoroughly, either by changing the government intirely, or reforming it according to the first institution, and making such good laws as may preserve its integrity when reformed. This has been so frequent in all the nations (both ancient and modern) with whose actions we are best acquainted, as appears by the foregoing examples, and many others that might be alledged, if the case were not clear, that there is not one of them which will not furnish us with many instances; and no one magistracy now in being which does not owe its original to some judgment of this nature. So that they must either derive their right from such actions, or confess they have none at all, and leave the nations to their original liberty of setting up those magistracies which best please themselves, without any restriction or obligation to regard one person or family more than another.

SECTION XLII.

THE PERSON THAT WEARS THE CROWN CANNOT DETERMINE THE AFFAIRS WHICH THE LAW REFERS TO THE KING.

Our author, with the rest of the vulgar, seems to have been led into gross errors by the form of writs summoning persons to appear before the king. The common style used in the trial of delinquents; the name of the king's witnesses given to those who accuse them; the verdicts brought in by juries, "*coram domino rege;*" and the prosecution made in the king's name, seem to have caused this. And they who understand not these phrases, render the law a heap of the most gross absurdities, and the king an enemy to every one of his subjects, when he ought to be a father to them all; since without any particular consideration or examination of what any witness deposes in a court of justice, tending to the death, confiscation, or other punishment, of any man, he is called the king's witness, whether he speak the truth, or a lie, and on that account favoured. It is not necessary to alledge many instances in a case that is so plain; but it may not be amiss to insert two or three of the most important reasons to prove my assertion.

1. If the law did intend, that he or she who wears a crown, should in his or her person judge all causes, and determine the most difficult questions, it must, like our author, presume that they will always be of profound wisdom to comprehend all of them, and of perfect integrity always to act according to their understanding. Which is no less than to lay the foundation of the government upon a thing merely contingent, that either never was, or very often fails, as is too much verified by experience, and the histories of all nations; or else to refer the decision of all to those who through the infirmities of age, sex, or person, are often uncapable of judging the least, or subject to such passions and vices as would divert them from justice, though they did understand it; both which seem to be almost equally preposterous.

2. The law must also presume, that the prince is always present in all the places where his name is used. The king of France is, as I have said already, esteemed to be present * "on the seat of justice" in all the parliaments and sovereign courts of the kingdom: and if his corporeal presence were by that phrase to be understood, he must be in all those distinct and far distant places at the same time: which absurdity can hardly be parallelled, unless by the Popish opinion of "transubstantiation." But indeed they are so far from being guilty of such monstrous absurdity, that he cannot in person be present at any trial: and no man can be judged, if he be.

* Sur son lit de justice.

This was plainly asserted to Lewis the Thirteenth, who would have been at the trial of the Duke of Candale, by the president de Bellivre, who told him, that as he could judge no man himself, so they could not judge any, if he were present; upon which he retired.

3. The laws of most kingdoms, giving to kings the confiscation of delinquents' estates, if they in their own persons might give judgment upon them, they would be constituted both judges and parties; which besides the forementioned incapacities, to which princes are as much subject as other men, would tempt them by their own personal interest to subvert all manner of justice.

This, therefore, not being the meaning of the law, we are to enquire what it is: and the thing is so plain, that we cannot mistake, unless we do it wilfully. Some name must be used in all manner of transactions, and in matters of public concernment none can be so fit as that of the principal magistrate. Thus are leagues made, not only with kings and emperors, but with the dukes of Venice and Genoa, the avoyer and senate of a canton in Switzerland, the burgermaster of an imperial town in Germany, and the states-general of the United Provinces. But no man thinking, I presume, these leagues would be of any value, if they could only oblige the persons whose names are used, it is plain, that they do not stipulate only for themselves; and that their stipulations would be of no value, if they were merely per-

sonal. And nothing can more certainly prove, they are not so, than that we certainly know, these dukes, avoyers, and burgermasters, can do nothing of themselves. The power of the states-general of the United Provinces is limitted to the points mentioned in the act of union made at Utrecht. The empire is not obliged by any stipulation made by the emperor without their consent. Nothing is more common than for one king, making a league with another, to exact a confirmation of their agreement, by the parliaments, diets, or general estates; because, says Grotius, "a prince does not stipulate for himself, but for the people under his government; and a king, deprived of his kingdom, loses the right of sending an ambassador." The powers of Europe shewed themselves to be of this opinion in the case of Portugal. When Philip the Second had gained the possession, they treated with him concerning the affairs relating to that kingdom: few regarded Don Antonio; and no man considered the dukes of Savoy, Parma, or Braganza, who perhaps had the most plausible titles; but when his grandson, Philip the Fourth, had lost that kingdom, and the people had set up the duke of Braganza, they all treated with him as king. And the English court, though then in amity with Spain, and not a little influenced by a Spanish faction, gave example to others, by treating with him, and not with Spain, touching matters relating to that state. Nay, I have been informed by those who well understood the affairs of that time, that the lord Cottington advising the late king not to receive any persons sent from the duke of Braganza,

rebel to his ally the king of Spain, in the quality of ambassadors; the king answered, that he must look upon that person to be king of Portugal, who was acknowledged by the nation. And I am mistaken, if his majesty now reigning did not find all the princes and states of the world to be of the same mind, when he was out of his kingdom, and could oblige no man but himself, and a few followers, by any treaty he could make.

For the same reason the names of kings are used in treaties, when they are either children, or otherwise uncapable of knowing what alliances are fit to be made or rejected; and yet such treaties do equally oblige them, their successors, and people, as if they were of mature age, and fit for government. No man, therefore, ought to think it strange, if the king's name be used in domestic affairs, of which he neither ought nor can take any cognizance. In these cases he is perpetually a minor: he must suffer the law to take its due course: and the judges, though nominated by him, are obliged by oath not to have any regard to his letters, or personal commands. If a man be sued, he must appear; and a delinquent is to be tried "*corum reges*," but no otherwise than "*secundum legem terræ*, according to the law of the land," not his personal will or opinion. And the judgments given must be executed, whether they please him or not, it being always understood that he can speak no otherwise than the law speaks, and is always present as far as the law requires. For this reason a noble lord, who was irregularly detained

in prison in 1681, being by *habeas corpus* brought to the bar of the king's bench, where he sued to be released upon bail; and an ignorant judge telling him he must apply himself to the king, he replied, that he came thither for that end; that the king might eat, drink, or sleep, where he pleased; but when he rendered justice he was always in that place. The king that renders justice is indeed always there; he never sleeps; he is subject to no infirmity; he never dies unless the nation be extinguished, or so dissipated as to have no government. No nation that has a sovereign power within itself, does ever want this king. He was in Athens and Rome, as well as at Babylon and Susa; and is as properly said to be now in Venice, Switzerland, or Holland, as in France, Morocco, or Turky. This is he to whom we all owe a simple and unconditional obedience. This is he "who never does any wrong:" it is before him we appear, when we demand justice, or render an account of our actions. All juries give their verdict in his sight; they are his commands that the judges are bound and sworn to obey, when they are not at all to consider such as they receive from the person that wears the crown. It was for treason against him, that Tresilian, and others like to him in several ages, were hanged. They gratified the lusts of the visible powers; but the invisible king would not be mocked. He caused justice to be executed upon Empson and Dudley. He was injured, when the perjured wretches, who gave that accursed judgment in the case of ship-money, were suffered to escape the like punishment by means of

the ensuing troubles, which they had chiefly raised. And I leave it to those who are concerned, to consider how many in our days may expect vengeance for the like crimes.

I should here conclude this point, if the power of granting a "*noli prosequi, cesset processus*," and pardons, which are said to be annexed to the person of the king, were not taken for a proof, that all proceedings at law depend upon his will. But whoever would from hence draw a general conclusion, must first prove his proposition to be universally true. If it be wholly false, no true deduction can be made; and if it be true only in some cases, it is absurd to draw from thence a general conclusion; and to errect a vast fabric upon a narrow foundation is impossible. As to the general proposition, I utterly deny it. The king cannot stop any suit that I begin in my own name, or invalidate any judgment I obtain upon it: he cannot release a debt of ten shillings due to me, nor a sentence for the like sum given upon an action of battery, assault, trespass, public nuisance, or the like. He cannot pardon a man condemned upon an appeal, nor hinder the person injured from appealing. His power therefore is not universal: if it be not universal, it cannot be inherent, but conferred upon him, or entrusted by a superior power that limits it.

These limits are fixed by the law: the law therefore is above him. His proceedings must be regulated by the law, and not the law by his will. Be-

sides, the extent of those limits can only be known by the intention of the law that sets them; and are so visible, that none but such as are wilfully blind can mistake. It cannot be imagined, that the law, which does not give a power to the king of pardoning a man that breaks my hedge, can intend he should have power to pardon one who kills my father, breaks my house, robs me of my goods, abuses my children and servants, wounds me, and brings me in danger of my life. Whatever power he has in such cases, is founded upon a presumption, that he who has sworn not to deny or delay justice to any man, will not break his oath to interrupt it. And farther, as he does nothing but what he may rightly do, "*cum magnatum & sapientium consilio;*" and that it is supposed, they will never advise him to do any thing, but what ought to be done, in order to attain the great ends of the law, justice and the public safety; nevertheless, lest this should not be sufficient to keep things in their due order, or that the king should forget his oath, not to delay or deny justice to any man, his counsellors are exposed to the severest punishments, if they advise him to do any thing contrary to it, and the law upon which it is grounded. So that the utmost advantage the king can pretend to in this case, is no more than that of the Norman, who said he had gained his cause, because it depended upon a point that was to be decided by his oath; that is to say, if he will betray the trust reposed in him, and perjure himself, he may sometimes exempt a villain from the punishment he deserves, and take the guilt upon himself.

I say sometimes; for appeals may be brought in some cases, and the waterman who had been pardoned by his majesty in the year 1680, for a murder he had committed was condemned and hanged at the assizes, upon an appeal. Nay, in cases of treason, which some men think relate most particularly to the person of the king, he cannot always do it. Gaveston, the two Spencers, Tresilian, Empson, Dudley, and others, have been executed as traitors for things done by the king's command; and it is not doubted they would have been saved, if the king's power had extended so far. I might add the cases of the earls of Strafford and Danby; for, though the king signed a warrant for the execution of the first, no man doubts he would have saved him, if it had been in his power. The other continues in prison, notwithstanding his pardon; and, for any thing I know, he may continue where he is, or come out in a way that will not be more to his satisfaction, unless he be found innocent, or something fall out more to his advantage than his majesty's approbation of what he has done. If, therefore, the king cannot interpose his authority to hinder the course of the law in contests between private men, nor remit the debts adjudged to be due, or the damages given to the persons aggrieved, he can in his own person have no other power in things of this nature, than in some degree to mitigate the vindictive power of the law; and this also is to be exercised no other way than as he is entrusted. But if he acts, even in this capacity, by a delegated power, and in a few cases he must act

according to the ends for which he is so entrusted, as the same law says, "*cum magnatum & sapientum consilio;*" and is not therein to pursue his own will and interests; if his oath farther oblige him not to do it; and his ministers are liable to punishment, if they advise him otherwise: if in matters of appeal he have no power; and if his pardons have been of no value, when contrary to his oath, he has abused that with which he is entrusted, to the patronizing of crimes, and exempting such delinquents from punishment as could not be pardoned without prejudice to the public; I may justly conclude, that the king, before whom every man is bound to appear, who does perpetually and impartially distribute justice to the nation, is not the man or woman that wears the crown; and that he or she cannot determine those matters, which by the law are referred to the king. Whether, therefore, such matters are ordinary or extraordinary, the decision is and ought to be placed where there is most wisdom and stability, and where passion and private interest does least prevail to the obstruction of justice. This is the only way to obviate that confusion and mischief, which our author thinks it would introduce. In cases of the first sort, this is done in England by judges and juries; in the other by the Parliament, which being the representative body of the people and the collected wisdom of the nation, is least subject to error, most exempted from passion, and most free from corruption, their own good, both public and private, depending upon the rectitude of their sanctions. They cannot do any thing that is

ill, without damage to themselves, and their posterity; which being all that can be done by human understanding, our lives, liberties, and properties, are by our laws directed to depend upon them.

SECTION XLIII.

PROCLAMATIONS ARE NOT LAWS.

[Filmer]

Our author, according to his usual method and integrity, lays great weight upon proclamations, as the significations of the king's pleasure, which in his opinion is our only law. But neither law nor reason openly directing, nor by consequences insinuating, that such a power should be put into an uncertain or suspected hand, we may safely deny them to be laws, or in any sense to have the effect of laws. Nay, they cannot be so much as significations of his will; for, as he is king, he can have no will but as the law directs. If he depart from the law, he is no longer king, and his will is nothing to us. Proclamations, at most, are but temporary, by the advice of council, in pursuance of the law. If they be not so, the subject is no way obliged to obey them, and the counsellors are to be punished for them. These laws are either immemorial customs, or statutes. The first have their beginning and continuance from the uni-

versal consent of the nation. The latter receive their authority and force of laws from parliaments, as is frequently expressed in the preambles. These are, under God, the best defence of our lives, liberties, and estates: they proceed not from the blind, corrupt, and fluctuating humour of a man, but from the mature deliberation of the choicest persons of the nation, and such as have the greatest interest in it. Our ancestors have always relied upon these laws; and it is to be hoped we shall not be so abandoned by God, so deprived of courage and common sense, to suffer ourselves to be cheated of the inheritance which they have so frequently, so bravely, and so constantly defended. Though experience has too well taught us, that parliaments may have their failings, and that the vices, which are industriously spread amongst them, may be too prevalent; yet they are the best helps we have, and we may much more reasonably depend upon them, than upon those who propagate that corruption among them, for which only they can deserve to be suspected. We hope they will take care of our concernments, since they are as other men, so soon as a session is ended, and can do nothing to our prejudice that will not equally affect them, and their posterity; besides the guilt of betraying their country, which can never be washed off. If some should prove false to their trust, it is probable that others would continue in their integrity; or if the base arts, which are usually practised by those who endeavour to delude, corrupt, enslave, and ruin nations, should happen to prevail upon the youngest and weakest, it may be reasonably

hoped, that the wisest will see the snares, and instruct their companions to avoid them. But if all things were so put into the hands of one man, that his proclamations were to be esteemed laws, the nation would be exposed to ruin, as soon as it should chance to fall into an ill hand. It is in vain to say we have a good king, who will not make an ill use of his power; for even the best are subject to be deceived by flatterers, and crowned heads are almost ever encompassed by them. The principal art of a courtier is to observe his master's passions, and to attack him on that side where he seems to be most weak. It would be a strange thing to find a man impregnable in every part; and, if he be not, it is impossible he should resist all the attempts that are made upon him. If his judgment come to be prepossessed, he and all that depend on him are lost. Contradictions, though never so just, are then unsafe; and no man will venture upon them, but he who dares sacrifice himself for the public good. The nature of man is frail, and stands in need of assistance. Virtuous actions, that are profitable to a commonwealth, ought to be made, as far as it is possible, safe, easy, and advantageous; and it is the utmost imprudence, to tempt men to be enemies to the public, by making the most pernicious actions to be the means of obtaining honour and favour, whilst no man can serve his country, but with the ruin of himself and his family.

However, in this case, the question is not concerning a person: the same counsels are to be followed, when Moses or Samuel is in the throne, as if Cali-

gula had invaded it. Laws ought to aim at perpetuity; but the virtues of a man die with him, and very often before him. Those who have deserved the highest praises for wisdom and integrity, have frequently left the honours they enjoyed to foolish and vicious children. If virtue may in any respect be said to outlive the person, it can only be when good men frame such laws and constitutions as by favouring it preserve themselves. This has never been done otherwise than by balancing the powers in such a manner, that the corruption which one or a few men might fall into, should not be suffered to spread the contagion to the ruin of the whole. The long continuance of Lycurgus' laws is to be attributed to this: they restrained the lusts of kings and reduced those to order who adventured to transgress them; whereas the whole fabric must have fallen to the ground in a short time, if the first that had a fancy to be absolute, had been able to effect his design. This has been the fate of all governments that were made to depend upon the virtue of a man, which never continues long in any family; and when that fails, all is lost. The nations, therefore, that are so happy to have good kings, ought to make a right use of them, by establishing the good that may outlast their lives. Those of them that are good, will readily join in this work, and take care, that their succesors may be obliged, in doing the like, to be equally beneficial to their own families, and the people they govern. If the rulers of nations be restrained, not only the people are by that means secured from the mischiefs of their vices and follies,

but they themselves are preserved from the greatest temptations to ill, and the terrible effects of the vengeance that frequently ensues upon it. An unlimited prince might be justly compared to a weak ship exposed to a violent storm, with a vast sail and no rudder. We have an eminent example of this in the book of Esther.* A wicked villain having filled the ears of a foolish king with false stories of the Jews, he issues out a proclamation for their utter extirpation; and not long after, being informed of the truth, he gave them leave by another proclamation to kill whom they pleased, which they executed upon seventy thousand men. The books of Ezra, Nehemiah, and Daniel, manifestly discover the like fluctuations in all the councils of Nabuchodnosor, Cyrus, Darius, and Artaxerxes. When good men had credit with them, they favoured the Israelites; sent them back to their own country; restored the sacred vessels that had been taken away; gave them all things necessary for the rebuilding of the city; and advanced the chief of them to the highest employments. But if they fell into ill hands, three just men must be thrown into the burning furnace for refusing to worship an idol; Daniel must be cast to the lions; the holy city esteemed rebellious, and those who endeavour to rebuild it, enemies to kings. Such was the state of things, when their proclamations passed for laws; and numbers of flattering slaves were ready to execute their commands, without examining whether they were just or unjust,

* Chap. iii.

good or bad. The life and death of the best men, together with the very being of nations, was exposed to chance; and they were either preserved or destroyed according to the humour of that man who spoke last to the king, or happened to have credit with him. If a frantic fancy came into the head of a drunken whore, Persepolis must be burnt, and the hand of Alexander is ready to execute her will. If a dancing wench please Herod, the most venerable of all human heads must be offered in a dish for a sacrifice to the rage of her impure mother. The nature of man is so frail, that wheresoever the word of a single person has had the force of a law, the innumerable extravagancies and mischiefs it has produced, have been so notorious, that all nations who are not stupid, slavish, and brutish, have always abominated it, and made it their principal care to find out remedies against it, by so dividing and balancing the powers of their government, that one or a few men might not be able to oppress and destroy those they ought to preserve and protect. This has always been as grateful to the best and wisest princes, as necessary to the weakest and worst, as I have proved already by the examples of Theopompus, Moses, and many others. These considerations have given beginning, growth, and continuance, to all the mixed governments that have been in the world; and I may justly say, there never was a good one that was not mixed. If other proofs of their rectitude were wanting, our author's hatred would be enough to justify them. He is so bitter an enemy to mankind, as to be displeased with nothing but

that which tends to their good, and so perverse in his judgment, that we have reason to believe that to be good, which he most abhors. One would think he had taken the model of the government he proposes, from the monstrous tyranny of Ceylon, an island in the East-Indies, where the king knows no other law than his own will. He kills, tears in pieces, impales, or throws to his elephants, whomsoever he pleases; no man has any thing that he can call his own: he seldom fails to destroy those who have been employed in his domestic service, or public offices; and few obtain the favour of being put to death, and thrown to the dogs, without torments. His subjects approach him no otherwise than on their knees, licking the dust, and dare assume to themselves no other name than that of dogs, or limbs of dogs. This is a true pattern of Filmer's patriarchical monarch. His majesty, as I suppose, is sufficiently exalted; for he does whatever he pleases. The exercise of his power is as gentle as can reasonably be expected from one who has all by the unquestionable right of usurpation: and knows the people will no longer suffer him, and the villains he hires to be the instruments of his cruelty, than they can be kept in such ignorance, weakness, and baseness, as neither to know how to provide for themselves or dare to resist him. We ought to esteem ourselves happy, if the like could be established among us; and are much obliged to our author for so kindly proposing an expedient that might terminate all our disputes. Let proclamations obtain the power of laws, and the

business is done. They may be so ingeniously contrived, that the ancient laws which we and our fathers have highly valued, shall be abolished, or made a snare to all those that dare remember they are Englishmen, and are guilty of the unpardonable crime of loving their country, or have the courage, conduct, and reputation, required to defend it. This is the sum of Filmer's philosophy, and this is the legacy he has left to testify his affection to the nation; which having for a long time lain unregarded, has been lately brought into the light again as an introduction of a Popish successor, who is to be established, as we ought to believe, for the security of the Protestant religion, and our English liberties. Both will undoubtedly flourish under a prince, who is made to believe the kingdom is his patrimony; that his will is a law; and that he has a power, which none may resist. If any man doubt whether he will make a good use of it, he may only examine the histories of what others in the same circumstances have done in all places where they have had power. The principles of that religion are so full of meekness and charity; the Popes have always shewed themselves so gentle towards those who would not submit to their authority; the Jesuits, who may be accounted the soul that gives life to the whole body of the faction, are so well natured, faithful, and exact in their morals; so full of innocence, justice, and truth; that no violence is to be feared from such as are governed by them. The fatherly care shewed to the Protestants of France, by the five last kings of the house of Valois; the mercy of Philip the Second of Spain

to his Pagan subjects in the West-Indies, and the more hated Protestants in the Netherlands; the moderation of the dukes of Savoy towards the Vaudois in the marquisate of Saluzzo and the vallies of Piedmont; the gentleness and faith of the two Marys, queens of England and Scotland; the kindness of the Papists to the Protestants of Ireland in the year 1641, with what we have reason to believe they did, and do still intend, if they can accomplish the ends of their conspiracy; in a word, the sweetness and apostolical meekness of the inquisition; may sufficiently convince us that nothing is to be feared where that principle reigns. We may suffer the word of such a prince to be a law, and the people to be made to believe it ought to be so, when he is expected. Though we should wave the bill of exclusion, and not only admit him to reign as other kings have done, but resign the whole power into his hands, it would neither bring inconvenience or danger on the present king. He can with patience expect, that nature should take her course, and would neither anticipate nor secure his entrance into the possession of the power, by taking one day from the life of his brother. Though the Papists know, that, like a true son of their church, he would prefer the advancement of their religion before all other considerations; and that one stab with a dagger, or a dose of poison, would put all under his feet; not one man would be found amongst them to give it. The assassins were Mahometans, not pupils of the honest Jesuits, nor ever employed by them. These things being certain, all our concernments would be secure, if instead of

the foolish statutes, and antiquated customs on which our ancestors and we have hitherto doted, we may be troubled with no law but the king's will, and a proclamation may be taken for a sufficient declaration of it. We shall by this means be delivered from that "liberty with a mischief," in which our mistaken nation seems so much to delight. This phrase is so new, and so peculiar to our author, that it deserves to be written upon his tomb. We have heard of "tyranny with a mischief, slavery and bondage with a mischief," and they have been denounced by God against wicked and perverse nations, as mischiefs comprehending all that is most to be abhorred and dreaded in the world. But Filmer informs us, that liberty, which all wise and good men have in all ages esteemed to be the most valuable and glorious privilege of mankind, is "a mischief." If he deserve credit, Moses, Joshua, Gideon, Samson, and Samuel, with others like them, were enemies to their country, in depriving the people of the advantages they enjoyed under the paternal care of Pharaoh, Adonibezek, Eglon, Jabin, and other kings of the neighbouring nations, and restoring them to that "liberty with a mischief," which he had promised to them. The Israelites were happy under the power of tyrants, whose proclamations were laws; and they ought to have been thankful to God for that condition, and not for the deliverances he wrought by the hands of his servants. Subjection to the will of a man is happiness, liberty is a "mischief." But this is so abominably wicked and detestable, that it can deserve no answer.

SECTION XLIV.

NO PEOPLE THAT IS NOT FREE CAN SUBSTITUTE DELEGATES.

How full soever the power of any person or people may be, he or they are obliged to give only so much to their delegates, as seems convenient to themselves or conducing to the ends they desire to attain; but the delegate can have none, except what is conferred upon him by his principal. If therefore the knights, citizens, and burgesses, sent by the people of England to serve in Parliament, have a power, it must be more perfectly and fully in those that send them. But (as was proved in the last section) proclamations, and other significations of the king's pleasure, are not laws to us. They are to be regulated by the law, not the law by them. They are to be considered only so far as they are conformable to the law, from which they receive all the strength that is in them, and can confer none upon it. We know no laws but our own statutes, and those immemorial customs established by the consent of the nation; which may be, and often are, changed by us. The legislative power, therefore, that is exercised by the Parliament, cannot be conferred by the writ of summons, but must be essentially and radically in the people, from whom their delegates and representatives have all that they have. But, says our author, "they must

only chuse, and trust those whom they chuse, to do what they list; and that is as much liberty as many of us deserve for our irregular elections of burgesses." This is ingeniously concluded: I take what servant I please, and when I have taken him, I must suffer him to do what he pleases. But from whence should this necessity arise? Why may not I take one to be my groom, another to be my cook, and keep them both to the offices for which I took them? What law does herein restrain my right? And if I am free in my private capacity to regulate my particular affairs according to my own discretion, and to allot to each servant his proper work, why have not I, with my associates, the freemen of England, the like liberty of directing and limiting the powers of the servants we employ in our public affairs? Our author gives us reasons proportionable to his judgment: "This were liberty with a mischief; and that of choosing only is as much as many of us deserve." I have already proved, that, as far as our histories reach, we have had no princes or magistrates, but such as we have made, and they have had no other power than what we have conferred upon them. They cannot be the judges of our merit, who have no power but what we gave them, through an opinion they did or might deserve it: they may distribute in parcels to particulars, that with which they are intrusted in the gross; but it is impossible, that the public should depend absolutely upon those who are nothing above other men, except what they are made to be, for and by the public. The restrictions, therefore, of the people's liberty must be from themselves, or there can be none.

Nevertheless, I believe, that the powers of every country, city, and borough of England, are regulated by the general law to which they have all consented, and by which they are all made members of one political body. This obliges them to proceed with their delegates in a manner different from that which is used in the United Netherlands, or in Switzerland. Amongst these, every province, city, or canton, making a distinct body independent from any other, and exercising the sovereign power within itself, looks upon the rest as allies to whom they are bound only by such acts as they themselves have made; and when any new thing, not comprehended in them, happens to arise, they oblige their delegates to give them an account of it, and retain the power of determining those matters in themselves. It is not so amongst us: every country does not make a distinct body, having in itself a sovereign power, but is a member of that great body which comprehends the whole nation. It is not, therefore, for Kent or Sussex, Lewis or Maidstone, but for the whole nation, that the members chosen in those places are sent to serve in Parliament; and though it be fit for them as friends and neighbours (so far as may be) to hearken to the opinions of the electors, for the information of their judgments, and to the end that what they shall say may be of more weight, when every one is known not to speak his own thoughts only, but those of a great number of men; yet they are not strictly and properly obliged to give account of their actions to any, unless the whole body of the nation for which they serve, and who are equally concerned in their

resolutions, could be assembled. This being impracticable, the only punishment to which they are subject, if they betray their trust, is scorn, infamy, hatred, and an assurance of being rejected, when they shall again seek the same honour. Although this may seem a small matter to those who fear to do ill only from a sense of the pains inflicted; yet it is very terrible to men of ingenuous spirits, as they are supposed to be who are accounted fit to be intrusted with so great powers. But why should this be "liberty with a mischief," if it were otherwise? Or how the liberty of particular societies would be greater, if they might do what they pleased, than whilst they send others to act for them, such wise men only as Filmer can tell us. For as no man, or number of men, can give a power which he or they have not, the Achaians, Etolians, Latins, Samnites, and Tuscans, who transacted all things relating to their associations by delegates; and the Athenians, Carthaginians, and Romans, who kept the power of the state in themselves; were all equally free. And in our days, the United Provinces of the Netherlands, the Switzers, and Grisons, who are of the first sort, and the Venitians, Genoeses, and Luccheses, who are of the other, are so also. All men that have any degree of common sense, plainly see, that the liberty of those who act in their own persons, and of those who send delegates, is perfectly the same, and the exercise is, and can only be, changed by their consent.

But whatever the law or custom of England be in this point, it cannot concern our question. The

general proposition concerning a patriarchical power cannot be proved by a single example. If there be a general power every where, forbidding nations to give instructions to their delegates, they can do it no where. If there be no such thing, every people may do it, unless they have deprived themselves of their right, all being born under the same condition. It is to no purpose to say, that the nations before mentioned had not kings, and therefore might act as they did. For, if the general thesis be true, they must have kings; and if it be not, none are obliged to have them, unless they think fit, and the kings they make are their creatures. But many of these nations had either kings, or other magistrates in power like to them. The provinces of the Netherlands, had dukes, earls, or marquises: Genoa and Venice have dukes. If any on account of the narrowness of their territories, have abstained from the name, it does not alter the case; for our dispute is not concerning the name, but the right. If that one man, who is in the principal magistracy of every nation, must be reputed the father of that people, and has a power which may not be limited by laws, he may be so also in the greatest. The least of men, is a man as well as a giant: and those in the West-Indies who have not above twenty or thirty subjects able to bear arms, are kings, as well as Xerxes. Every nation may divide itself into small parcels, as some have done, by the same law they have restrained or abolished their kings, joined to one another, or taken their hazard of subsisting by themselves;

acted by delegation, or retaining the power in their own persons; given finite or indefinite powers; reserved to themselves a power of punishing those who should depart from their duty, or referred it to their general assemblies. And that liberty, for which we contend as the gift of God and nature, remains equally to them all.

If men who delight in cavilling should say, that great kingdoms are not to be regulated by the examples of small states, I desire to know when it was, that God ordained great nations should be slaves, and deprived of all right to dispose matters relative to their government; whilst he left to such as had, or should divide themselves into small parcels, a right of making such constitutions as were most convenient for them. When this is resolved, we ought to be informed, what extent of territory is required to deserve the name of a great kingdom. Spain and France are esteemed great, and yet the deputies or procuradores of the several parts of Castile did in the cortez had at Madrid, in the beginning of Charles the Fifth's reign, excuse themselves from giving the supplies he desired,* because they had received no orders in that particular from the towns that sent them; and afterwards receiving express order not to do it, they gave his majesty a flat denial. The like was frequently done during the reigns of that great prince, and of his son Philip the Second. And generally those procuradores never granted any

* Vida de Carlos 5 de Sandoval.

thing of importance to either of them, without particular orders from their principals. The same way was taken in France, as long as there were any general assemblies of estates; and, if it do not still continue, it is because there are none. For, no man who understood the affairs of that kingdom, did ever deny, that the deputies were obliged to follow the orders of those who sent them. And perhaps, if men would examine by what means they came to be abolished, they might find, that the cardinals de Richelieu and Mazarin, with other ministers who have accomplished that work, were actuated by some other principle than that of justice, or the establishment of the laws of God and nature. In the general assembly of estates held at Blois in the time of Henry the Third, Bodin then deputy for the third estate of Vermandois, by their particular order, proposed so many things as took up a great part of their time.* Other deputies alledged no other reason for many things said and done by them, highly contrary to the king's will, than that they were commanded to do so by their superiors. These general assemblies being laid aside, the same custom is still used in the lesser assemblies of estates in Languedoc and Brittany. The deputies cannot, without the infamy of betraying their trust, and fear of punishment, recede from the orders given by their principals; and yet we do not find, that "liberty with a mischief" is much more predominant in France than amongst us. The same method is every day practised in the diets of

* Hist. Thuan.

Germany. The princes and great lords, who have their places in their own right, may do what they please: but the deputies of the cities must follow such orders as they receive. The histories of Denmark, Sweden, Poland, and Bohemia, testify the same thing: and if this "liberty with a mischief" do not still continue entire in all those places, it has been diminished by such means as suit better with the manners of pirates, than the laws of God and nature. If England, therefore, do not still enjoy the same, we must have been deprived of it either by such unjustifiable means, or by our own consent. But, thanks be to God, we know no people who have a better right to liberty, or have better defended it, than our own nation. And if we do not degenerate from the virtue of our ancestors, we may hope to transmit it entire to our posterity. We always may, and often do, give instructions to our delegates; but the less we fetter them, the more we manifest our own rights; for those who have only a limited power must limit that which they give; but he that can give an unlimited power must necessarily have it in himself. The great treasurer Burleigh said, the Parliament could do any thing but turn a man into a woman. Sir Thomas More, when Rich, solicitor to king Henry the Eighth, asked him, if the Parliament might not make R. Rich king, said, that was "*casus levis*," taking it for granted, that they might make or unmake whom they pleased. The first part of this, which includes the other, is asserted by the statute of the 13th of Queen Elizabeth, denouncing the most grievous punishments

against all such as should dare to contradict it. But if it be in the Parliament, it must be in those who give to parliament-men the power by which they act; for before they are chosen, they have none, and can never have any, if those that send them had it not in themselves. They cannot receive it from the magistrate; for that power which he has, is derived from the same spring. The power of making and unmaking him cannot be from himself; for he that is not, can do nothing; and when he is made, can have no other power than is conferred upon him by those that make him. He who departs from his duty, desires to avoid the punishment: the power, therefore, of punishing him is not from himself. It cannot be from the House of Peers, as it is constituted; for they act for themselves, and are chosen by kings: and it is absurd to think, that kings, who generally abhor all restriction of their power, should give that to others by which they might be unmade. If one or more princes, relying upon their own virtue and resolutions to do good, had given such a power against themselves, as Trajan did, when he commanded the prefect to use the sword for him, if he governed well; and against him, if he governed ill; it would soon have been rescinded by their succesors. If our Edward the First had made such a law, his lewd son would have abolished it, before he would have suffered himself to be imprisoned and deposed by it. He would never have acknowledged his unworthiness to reign, if he had been tied to no other law than his own will; for he could not transgress that; nor have owned the mercy of the Parliament, in sparing his life, if they had acted only by a power, which he had

conferred upon them. This power must, therefore, be in those who act by a delegated power; and none can give it to their delegates, but they who have it in themselves. The most certain testimony that can be given of their unlimited power, is, that they rely upon the wisdom and fidelity of their deputies, so as to lay no restrictions upon them; they may do what they please, if they take care, "*ne quid detrimenti respublica accipiat*, that the commonwealth receive no detriment." This is a commission, fit to be granted by wise and good men, to those they choose through an opinion that they are so also, and that they cannot bring any prejudice upon the nation, that will not fall upon themselves, and their posterity. This is also fit to be received by those, who seeking nothing but that which is just in itself, and profitable to their country, cannot foresee what will be proposed when they are all together; much less, resolve how to vote, till they hear the reasons on both sides. The electors must necessarily be in the same ignorance; and the law which should oblige them to give particular orders to their knights and burgesses, in relation to every vote, would make the decision of the most important affairs to depend upon the judgment of those, who know nothing of the matters in question, and by that means cast the nation into the utmost danger of the most inextricable confusion. This can never be the intention of that law, which is "*sanctio recta*," and seeks only the good of those that live under it. The foresight, therefore, of such a mischief can never impair the liberties of the nation, but establish them.

SECTION XLV.

THE LEGISLATIVE POWER IS ALWAYS ARBITRARY, AND NOT TO BE TRUSTED IN THE HANDS OF ANY WHO ARE NOT BOUND TO OBEY THE LAWS THEY MAKE.

If it be objected, that I am a defender of arbitrary powers, I confess I cannot comprehend how any society can be established or subsist without them; for the establishment of government is an arbitrary act, wholly depending upon the will of men. The particular forms and constitutions, the whole series of the magistracy, together with the measure of power given to every one, and the rules by which they are to exercise their charge, are so also. Magna Charta, which comprehends our ancient laws, and all the subsequent statutes, were not sent from heaven, but made according to the will of men. If no men could have a power of making laws, none could ever have been made; for all that are or have been in the world, except those given by God to the Israelites, were made by them; that is, they have exercised an arbitrary power in making that to be law which was not, or annulling that which was. The various laws and governments, that are or have been in several ages and places, are the product of various opinions in those who had the power of making them. This must necessarily be, unless a general rule be

set to all; for the judgments of men will vary, if they are left to their liberty; and the variety that is found among them, shews they are subject to no rule but that of their own reason, by which they see what is fit to be embraced or avoided, according to the several circumstances under which they live. The authority that judges of these circumstances is arbitrary, and the legislators shew themselves to be more or less wise and good, as they do rightly, or not rightly, exercise this power. The difference, therefore, between good and ill governments is not, that those of one sort have an arbitrary power which the others have not; for they all have it; but that those which are well constituted, place this power so as it may be beneficial to the people, and set such rules as are hardly to be transgressed; whilst those of the other sort fail in one or both these points. Some also through want of courage, fortune, or strength, may have been oppressed by the violence of strangers, or suffered a corrupt party to rise up within themselves, and by force or fraud to usurp a power of imposing what they pleased. Others, being sottish, cowardly, and base, have so far erred in the foundations, as to give up themselves to the will of one or a few men, who, turning all to their own profit or pleasure, have been just in nothing but in using such a people like beasts. Some have placed weak defences against the lusts of those they have advanced to the highest places, and given them opportunities of arrogating more power to themselves than the law allows. Where any of these errors are committed, the government may be easy for a while, or

at least tolerable, while it continues uncorrupted; but it cannot be lasting. When the law may be easily or safely overthrown, it will be attempted. Whatever virtue may be in the first magistrates, many years will not pass before they come to be corrupted; and their successors, deflecting from their integrity, will seize upon the ill-guarded prey. They will then not only govern by will, but by that irregular will, which turns the law, that was made for the public good, to the private advantage of one or a few men. It is not my intention to enumerate the several ways that have been taken to effect this; or to shew what governments have deflected from the right, and how far. But I think I may justly say, that an arbitrary power was never well placed in any men, and their successors, who were not obliged to obey the laws they should make. This was well understood by our Saxon ancestors; they made laws in their assemblies and councils of the nation; but all those who proposed or assented to those laws, as soon as the assemblies were dissolved, were comprehended under the power of them, as well as other men. They could do nothing to the prejudice of the nation, that would not be as hurtful to those who were present, and their posterity, as to those who by many accidents might be absent. The Normans entered into, and continued in the same path. Our parliaments at this day are in the same condition. They may make prejudicial wars, ignominious treaties, and unjust laws: yet when the session is ended, they must bear the burden as much as others; and

when they die, the teeth of their children will be set on edge with the sour grapes they have eaten. But it is hard to delude or corrupt so many: men do not in matters of the highest importance yield to slight temptations. No man serves the devil for nothing: small wages will not content those who expose themselves to perpetual infamy, and the hatred of a nation, for betraying their country. Our kings had not wherewithal to corrupt many till these last twenty years, and the treachery of a few was not enough to pass a law. The union of many was not easily wrought, and there was nothing to tempt them to endeavour it; for they could make little advantage during the session, and were to be lost in the mass of the people, and prejudiced by their own laws, as soon as it was ended. They could not in a short time reconcile their various interests or passions, so as to combine together against the public; and the former kings never went about it. We are beholden to Hyde, Clifford, and Danby, for all that has been done of that kind. They found a Parliament full of lewd young men chosen by a furious people in spite to the puritans, whose severity had distasted them. The weakest of all ministers had wit enough to understand, that such as these might be easily deluded, corrupted, or bribed. Some were fond of their seats in Parliament, and delighted to domineer over their neighbours by continuing in them: others preferred the cajoleries of the court before the honour of performing their duty to the country that employed them. Some sought to relieve their ruined fortunes, and were most forward to give the king a vast reve-

nue, that from thence they might receive pensions: others were glad of a temporary protection against their creditors. Many knew not what they did when they annulled the triennial act; voted the militia to be in the king; gave him the excise, customs, and chimney-money; made the act for corporations, by which the greatest part of the nation was brought under the power of the worst men in it; drunk or sober passed the five-mile act, and that for uniformity in the church. This emboldened the court to think of making parliaments to be the instruments of our slavery, which had in all ages past been the firmest pillars of our liberty. There might have been, perhaps, a possibility of preventing this pernicious mischief in the constitution of our government. But our brave ancestors could never think their posterity would degenerate into such baseness as to sell themselves and their country: but how great soever the danger may be, it is less than to put all into the hands of one man, and his ministers: the hazard of being ruined by those who must perish with us, is not so much to be feared, as by one who may enrich and strengthen himself by our destruction. It is better to depend upon those who are under a possibility of being again corrupted, than upon one who applies himself to corrupt them, because he cannot otherwise accomplish his designs. It were to be wished, that our security were more certain; but this being, under God, the best anchor we can have, it deserves to be preserved with all care, till one of a more unquestionable strength be framed by the consent of the nation.

SECTION XLVI.

THE COERCIVE POWER OF THE LAW PROCEEDS FROM THE AUTHORITY OF PARLIAMENT.

HAVING proved that proclamations are not laws, and that the legislative power, which is arbitrary, is trusted only in the hands of those who are bound to obey the laws that are made, it is not hard to discover what it is that gives the power of law to the sanctions under which we live. Our author tells us, "that all statutes or laws are made properly by the king alone, at the rogation of the people, as his majesty King James, of happy memory affirms, in his true law of free monarchy; and as Hooker teaches us, that laws do not take their constraining power from the quality of such as devise them, but from the power that giveth them the strength of law." But if the rogation of the people be necessary, that cannot be a law which proceeds not from their rogation: the power, therefore, is not alone in the king; for a most important part is confessed to be in the people. And as none could be in them, if our author's proposition, or the principles upon which it is grounded, were true, the acknowledgment of such a part to be in the people shews them to be false. For if the king had all in himself, none could participate with him: if any do participate, he hath not all; and it is from that law by which they do participate, that we are to

know what part is left to him. The preambles of most acts of parliaments manifest this by the words, "Be it enacted by the lords spiritual and temporal, and commons, in Parliament assembled, and by authority of the same." But King James, says Filmer, "in his law of free monarchy, affirms the contrary;" and it may be so; yet that is nothing to us. No man doubts, that he desired it might be so in England: but it does not from thence appear, that it is so. The law of a free monarchy is nothing to us; for that monarchy is not free, which is regulated by a law not to be broken without the guilt of perjury, as he himself confessed in relation to ours.* As to the words cited from Hooker, I can find no hurt in them. To draw up the form of a good law, is a matter of invention and judgment; but it receives the force of a law from the power that enacts it. We have no other reason for the payment of excise or customs, than that the Parliament has granted those revenues to the king to defray the public charges. Whatever, therefore, King James was pleased to say in his books, or in those written for him, we do not so much as know that the killing of a king is treason, or to be punished with death, otherwise than as it is enacted by Parliament; † and it was not always so: for, in the time of Ethelstan, the estimates of lives were agreed in Parliament, and that of a king valued at thirty thousand thrymsæ. And, if that law had not been altered by the Parliament, it must have been in force at this day. It had

* Speech in star-chamber, 1616. † Leg. Æthelstani, fol. 71.

been in vain for a king to say he would have it otherwise; for he is not created to make laws, but to govern according to such as are made, and sworn to assent to * "such as shall be proposed." He who thinks the crown not worth accepting on these conditions, may refuse it. The words "*le roy le veut*," are only a pattern of the French fashions, upon which some kings have laid great stress, and would no doubt have been glad to introduce, "*car tel est nostre plaisir*;" but that may prove a difficult matter. Nay, in France itself, where that style, and all the ranting expressions that please the vainest of men, are in mode, no edict has the power of a law, till it be registered in Parliament. This is not a mere ceremony, as some pretend, but all that is essential to a law. Nothing has been more common, than for those parliaments to refuse edicts sent to them by the king. When John Chastel had, at the instigation of the Jesuits, stabbed Henry the Fourth in the mouth, and that order had designed or executed many other execrable crimes, they were banished out of the kingdom by an arrest of the Parliament of Paris. Some other parliaments registered the same; but those of Thoulouse and Bourdeaux absolutely refused; and notwithstanding all that the king could do, the Jesuits continued at Tournon, and many other places within their precincts, till the arrest was revoked. These proceedings are so displeasing to the court, that the most violent ways have been often used to abolish them. About the year 1650,† Seguier, then chan-

* Quas vulgus elegerit. † Mem. de L. R. F.

cellor of France, was sent with a great number of soldiers to oblige the Parliament of Paris to pass some edicts upon which they had hesitated; but he was so far from accomplishing his design, that the people rose against him, and he thought himself happy, that he escaped with his life. If the parliaments do not in all parts of the kingdom continue in the liberty of approving or rejecting all edicts, the law is not altered, but oppressed by the violence of the sword: and the Prince of Conde, who was principally employed to do that work, may, as I suppose, have had leisure to reflect upon those actions, and cannot but find reason to conclude, that his excellent valour and conduct was used in a most noble exploit, equally beneficial to his country and himself. However, those who are skilled in the laws of that nation, do still affirm, that all public acts which are not duly examined and registered, are void in themselves, and can be of no force longer than the miserable people lie under the violence of oppression; which is all that could reasonably be said, if a pirate had the same power over them. But whether the French have willingly offered their ears to be bored, or have been subdued by force, it concerns us not. Our liberties depend not upon their will, virtue, or fortune: how wretched and shameful soever their slavery may be, the evil is only to themselves. We are to consider no human laws but our own; and if we have the spirit of our ancestors we shall maintain them, and die as free as they left us. "*Le roy le veut*," though written in great letters, or pronounced in the most tragical manner, can signify

no more than that the king in performance of his oath does assent to such laws as the lords and commons have agreed. Without prejudice to themselves, and their liberties, a people may suffer the king to advise with his council upon what they propose. Two eyes see more than one, and human judgment is subject to errors. Though the Parliament consist of the most eminent men of the nation, yet when they intend good they may be mistaken. They may safely put a check upon themselves, that they may farther consider the most important matters, and correct the errors they may have committed, if the king's council do discover them: but he can speak only by the advice of his council; and every man of them is with his head to answer for the advices he gives. If the Parliament has not been satisfied with the reasons given against any law they offered, it has frequently passed; and if they have been satisfied, it was not the king, but they, that laid it aside. He that is of another opinion, may try whether "*le roy le veut*" can give the force of a law to any thing conceived by the king, his council, or any other than the Parliament. But if no wise man will affirm that he can do it, or deny that by his oath he is obliged to assent to those that come from them, he can neither have the legislative power in himself, nor any other part in it than what is necessarily to be performed by him, as the law prescribes.

I know not what our author means by saying, "*Le roy le veut* is the interpretative phrase pronounced at the passing of every act of Parliament:"

for, if there be difficulty in any of them, those words do no way remove it. But the following part of the paragraph better deserves to be observed. "It was, says he, the ancient custom for a long time, until the days of Henry the Fifth, for the kings, when any bill was brought to them that had passed both houses, to take and pick out what they liked not; and so much as they chose, was enacted as a law: but the custom of the latter kings hath been so gracious, as to allow always of the intire bill, as it passed both houses." He judiciously observes, then our kings began to be gracious, and we to be free. That king (excepting the persecution for religion, in his time, which is rather to be imputed to the ignorance of that age, than to any evil in his own nature) governed well; and, as all princes, who have been virtuous and brave, have always desired to preserve their subjects' liberty, which they knew to be the mother and nurse of their valour, fitting them for great and generous enterprizes; his care was to please them, and to raise their spirits. But, about the same time, those detestable arts, by which the mixed monarchies in this part of the world have been every where terribly shaken, and in many places totally overthrown, began to be practised. Charles the Seventh of France, under pretence of carrying on a war against him and his son, took upon him to raise money, by his own authority; and we know how well that method has been pursued. The mischievous sagacity of his son Lewis the Eleventh, which is now called king-craft, was wholly exerted in the subversion of

the laws of France, and the nobility that supported them. His successors, except only Lewis the Twelfth, followed his example; and in other nations, Ferdinand of Arragon, James the Third of Scotland, and Henry the Seventh of England, were thought to imitate him the most. Though we have little reason to commend all the princes that preceded Henry the Fifth, yet I am inclined to date the general impairing of our government from the death of that king, and his valiant brothers. His weak son became a prey to a furious French woman, who brought the maxims of her own country into ours, and advanced the worst of villains to govern according to them. These measures were pursued by Edward the Fourth, whose wants, contraced by prodigality and debauchery, were to be supplied by fraud and rapine. The ambition, cruelty, and perfidiousness of Richard the Third; the covetousness, and malicious subtlety of Henry the Seventh; the violent lust, rage, and pride of Henry the Eighth; and the bigotted fury of Queen Mary, instigated by the craft and malice of Spain; persuaded me to believe, that the English liberty did not receive birth or growth from the favour and goodness of their gracious princes. But, it seems, all this is mistaken: Henry the Sixth was wise, valiant, and no way guided by his wife; Edward the Fourth, continent, sober, and contented with what the nation gave him; Richard the Third, mild, gentle, and faithful; Henry the Seventh, sincere, and satisfied with his own; Henry the Eighth, humble, temperate, and just; and Queen Mary, a friend to our country and religion.

No less praises sure can be due to those who were so gracious to recede from their own right of picking what they pleased out of our laws, and to leave them intirely to us, as they passed both houses. We are beholden to our author for the discovery of those mysteries: but though he seems to have taken an oath, like that of the gypsies when they enter into that virtuous society, never to speak one word of truth, he is not so subtle in concealing his lies. All kings were trusted with the publication of the laws; but all kings did not falsify them. Such as were not wicked and vicious, or so weak as to be made subservient to the malice of their ministers and flatterers, could never be drawn into the guilt of so infamous a cheat, directly contrary to the oath of their coronation. They swear to pass such "laws* as the people chuse;" but, if we will believe our author, they might have picked out whatever they pleased, and falsely imposed upon the nation, as a law made by the lords and commons, that which they had modelled according to their own will, and made to be different from, or contrary to, the intention of the parliament. The king's part in this fraud (of which he boasts) was little more than might have been done by the speaker, or his clerks. They might have falsified an act as well as the king, though they could not so well preserve themselves from punishment. It is no wonder if, for a while no stop was put to such an abominable custom. It was hard to think a king would be guilty of a fraud, that

* Quas vulgus elegerit.

were infamous in a slave: but that proved to be a small security, when the worst of slaves came to govern them. Nevertheless it is probable they proceeded cautiously: the first alterations were, perhaps innocent, or it may be, for the best. But, when they had once found out the way, they stuck at nothing that seemed for their purpose. This was like the plague of leprosy, that could not be cured; the house infected was to be demolished; the poisonous plant must be torn up by the root; the trust that had been broken, was to be abolished; they who had perverted or frustrated the law, were no longer to be suffered to make the least alteration; and that brave prince readily joined with his people, to extinguish the mischievous abuse that had been introduced by some of his worthless predecessors. The worst and basest of them had continual disputes with their parliaments, and thought that whatever they could detract from the liberty of the nation, would serve to advance their prerogative. They delighted in frauds, and would have no other ministers, but such as would be the instruments of them. Since their words could not be made to pass for a law, they endeavoured to impose their own, or their servants' inventions, as acts of parliaments, upon the deluded people, and to make the best of them subservient to their corrupt ends, and pernicious counsels. This, if it had continued, might have overthrown all our rights, and deprived us of all that men call good in the world. But the providence of God furnished our ancestors with an opportunity of providing against so great, so universal a mischief.

They had a wise and valiant prince, who scorned to encroach upon the liberties of his subjects, and abhorred the detestable arts by which they had been impaired. He esteemed their courage, strength, and love, to be his greatest advantage, riches, and glory. He aimed at the conquest of France, which was only to be effected by the bravery of a free and well satisfied people. Slaves will always be cowards, and enemies to their master: by bringing his subjects into that condition, he must infallibly have ruined his own designs, and made them unfit to fight, either for him or themselves. He desired, not only that his people should be free, during his time, but that his successors should not be able, by oblique and fraudulent ways, to enslave them. If it be a reproach to us, that women have reigned over us, it is much more to the princes that succeeded our Henry, that none of them did so much imitate him in his government, as Queen Elizabeth. She did not go about to mangle acts of parliament, and to pick out what might serve her turn; but frequently passed forty or fifty in a session, without reading one of them. She knew that she did not reign for herself, but for her people; that what was good for them, was either good for her, or that her good ought not to come into competition with that of the whole nation; and that she was, by oath, obliged to pass such laws, as were presented to her on their behalf. This not only shews, that there is no such thing as a legislative power placed in kings by the laws of God and nature, but that nations have it in themselves. It was not by law, nor by right, but by usurpation, fraud, and perjury,

that some kings took upon them to pick what they pleased out of the public acts. Henry the Fifth did not grant us the right of making our own laws; but, with his approbation, we abolished a detestable abuse, that might have proved fatal to us. And, if we examine our history, we shall find, that every good and generous prince has sought to establish our liberties, as much as the most base and wicked to infringe them.

AN

Alphabetical Table,

AND

COMPLETE INDEX TO THE THREE VOLUMES.

THE LETTERS REFER TO THE VOLUME, AND THE FIGURES TO THE PAGE.

AARON, vide Moses.

Abdication, Camillus the dictator obliged to abdicate his magistracy, ii. 393.

Abraham, and the patriarchs not kings, i. 339, 345.
Could never exercise a regal power, i. 344.
Lived with Lot in perfect freedom, ii. 19.

Abrogation, where a person abrogates the magistracy, ii. 71, 236, 238.
God declared Saul's kingdom to be intirely abrogated, ii. 416, 417.
A whole people, or part of them, may at their own pleasure abrogate a kingdom, ii. 419.
What is said to be so, ii. 422.
None can abrogate the law of God, iii. 133, 136.

Absalom, his revolt, ii. 422, 424.

Absolute power and monarchy, out in its first beginning, i. 341, 399.
Of France and Turky, i. 78, ii. 13, 119, 191, 193, 196, iii. 141.
Burdensome and dangerous, ii. 10.
Who fit subjects for it, ii. 60, 173, 186, 188.
Scarce ever conquered a free people, ii. 83, 98, 193, 208.
Who advocates for it, ii. 85, 134.
Nothing more mutable, ii. 86, 93.
Cannot be restained by law, ii. 93, 177, 181, 185.
Where it should be of more strength than limited, ii. 95.
The sad effects of it, i. 348, 253, 301, 304, 305, iii. 141, 144, 351, 352.
Rome decayed and perished under it, ii. 125.
The root and foundation of it, ii. 144, 174, 177.
Not established among the Greeks by law, ii. 156.

Encourages venality and corruption, ii. 172, 173, 290.
Advances the worst of men, ii. 177, 179, 281.
In what sense most contrary to nature, ii. 181.
By whom only to be endured, ii. 188, iii. 142.
The people in it always miserable, ii. 191, 225, 230, 286.
All things managed by one or a very few men, i. 197.
Seems totally to be exempted from mistakes, and why, ii. 228.
Almost all troubles arising in them, proceed from malice, ii. 229.
Sedition most frequently in, and natural to them, ii. 247, 252, 270, 273, 275.
By what means this arbitrary power is set up, ii. 248, 285.
Few or none subsist long under it, ii. 275.
Where it cannot be introduced, ii. 261.
Integrity not to be found therein, ii. 297.
What *care* such monarchs have for their people, ii. 315, 316.
Their chief labour is to be above the law, ii. 348.
Absolute power, no society can be established, or subsist without it somewhere, iii. 366, 367.
Never well placed in men and their successors, if not obliged to obey the laws that should be made, iii. 369.
Abuses, in government, when never to be reformed, ii. 331.
Account, to whom the people of Rome are to give theirs, ii. 382.
Accusers, vide False Witnesses.
Acquisition, what right can be pretended from it, iii. 257.
Acts of Parliament, till the days of Henry V. for the most part, were penned by the king's officers, iii. 300. vide Statutes.
Adam, his sin, what, i. 314.
His kingdom, i. 340.
Had only an œconomical power, ii. 15.
Adoption, wherein the folly of it, i. 410, 412, 413, 416.
What may be called so improperly, i. 412, 413.
Jacob adopted Ephraim and Manasseh, ii. 11.
Advancements, ought ever to be for the sake of the public, not of the man, i. 440.
Have often made people worse, i. 441, 442.
Adversary, who a vicious prince reckons such, iii. 317.
Adultery, became as common in Sparta, as in any part of the world, and why, ii. 398.
Cannot be dispensed withal, even by the Pope himself, iii. 245.
Affections, of the people, the prince's most important treasure, ii. 349.
Agesilaus, his great achievements, ii. 98, 157.
His denial of Artaxerxes being greater than he, i. 377.
Xenophon's great character of him, and for what, iii. 26.
Agreements, the treachery of violating them aggravated by perjury, ii. 241, vide Contracts.
Made by king John of France, when prisoner at London, and Francis when under the same circumstances at

Madrid, reputed null, ii. 361.
A good man performs them though he is a loser by the bargain, iii. 93.
The necessity of standing to them from religion and the law of nature, iii. 238.
Between princes, confirmed afterwards by parliaments, &c. iii. 340.
Agrippa (Menenius) appeased one of the most violent seditions at Rome, and how, ii. 228.
Ahab's growing sick on Naboth's refusing him his vineyard, ii. 452.
When his house was to be cut off, iii. 325.
Alexander, of Macedon, thought to be meant by Aristotle for the man framed by nature for a king, ii. 435, 441.
His extravagant frolics, ii. 91.
His fortune overthrew his virtue, ii. 91, 100. iii. 322.
His reign full of conspiracies, ii. 251.
After his death the kingdom fell all to pieces, ii. 148.
It is thought he died by poison, ii. 148.
Alexander, of Epirus, in valour thought equal, in power little inferior to him, ii. 221.
Alfred, Magna Charta grounded on his laws, i. 329.
Alienation, vide Dominion.
Allegiance is such an obedience as the law requires, ii. 218, 282.
Alliances, ii. 31, 19, 319.
All things in their beginning are weak, ii. 213.
Change by length of time, ii. 225.
Altar, the horns of it no protection to wilful murderers, iii. 24.
Ambassadors, from whence kings have their right of sending them, iii. 238, 340.
Charles Gustavus, his excellent saying to one, iii. 251.
From the Privernates, their brave and resolute answer to Plautius, the consul, when they were suing for peace, iii. 281.
From the other estates of Scotland to queen Elizabeth, iii. 326.
Ambition, honest and wise men exposed the folly of it, i. 425. ii. 266.
Can never give a right to any over the liberties of a whole nation, ii. 32.
Tends to public ruin, ii. 155.
Is the overthrow of states and empires, ii. 173, 175.
Man naturally prone to it, ii. 178.
What it prompts, ii. 258.
Has produced more mischiefs than any other desires and passions, ii. 265, 274, 277, 280, 474.
St. Ambrose, seems to have had no knowledge of the Gothic polity, ii. 474.
Ancestors, what we ought to do, if we will be just to them, iii. 295, 381.
Never thought their posterity would so degenerate, as to sell themselves and their country, iii. 371.
By exerting their vigor we shall maintain our laws, iii. 376.
Angli, or Saxons; Tacitus, his description of their hither,

and that they had the root of power and liberty in themselves, iii. 211.
Antiochus, his vain boast to destroy Greece and Italy, ii. 98.
How soon he lost all he possessed in Greece, &c. ii. 197.
Apostles, what their work was in relation to the civil state, ii. 247, iii. 31, 35, 41.
Appanages, in France, to kings brothers, produced very bad effects, ii. 149.
Or to their sons, but they remain still subject to the crown, ii. 364, iii. 114.
Appeals, the right of them to the people, ii. 113, 114, 122, 139, 166, 241, iii. 25, 59.
None from parliamentary decrees, ii. 236.
To whom they were made when there was in Rome no superior magistrate in being, ii. 59.
No pardoning a man condemned upon one, ii. 225.
An instance of it, iii. 244.
Arcana Imperii, how to be meddled with, i. 321, 322, 323.
Arians, as cruel as the Pagans, ii. 211.
Aristocracy, what, i. 355. iii. 77.
For whom best, i. 434.
How set up, i. 444.
Was the Jewish government, ii. 63.
Who patrons for it, ii. 43.
The Lacedemonians for it, ii. 371.
Whether it seems established by nature, iii. 163.
Aristotle, slighted by Filmer, ii. 35.
Commendation of him i. 429, 79.
His notion of civil societies, ii. 431, 133, 109, 110, 120, 60.
Who he thought was framed by nature for a king i. 435. ii. 141, 90.
Wherein he highly applauds monarchy, ii. 79, 80.
Thinks the first monarchs were but little restrained, because they were chosen for their virtue, ii. 366, 355.
His distinction between a king and tyrant, ii. 452, iii. 160.
Who, he says are governed by God, rather than by men, iii. 70, 71.
Proves that no man is entrusted with an absolute power, iii. 160.
Armies, of the East and West, set up emperors for themselves, ii. 107.
Out of what sort of men they are to be formed, ii. 220, vide Mercenary and Soldiery.
Arminius, killed for aiming at a crown, which blemished all his other virtues, iii. 42, 210.
Arms, those just and pious that are necessary, and those necessary, when there was no hope of safety by any other way, iii. 327.
Artaxerxes, and his army overthrown by the valour of ten thousand Grecians, ii. 96, 97.
Artificer, what sort of one he is to whom implicit faith is due, i. 322.
Assemblies, that took their au-

thority from the law of nature, considered, ii. 29.
General of the people, ii. 69, 70, 71.
The use of them, ii. 85, iii. 214.
Of the estates in France, brought now to nothing, ii. 150.
Settled the crown on Pepin, ii. 156.
What they ought to see performed, ii. 365.
Had the power always of the whole people in them, iii. 10.
In them none judge for themselves, iii. 61.
The greatest trust that can be, was ever reposed in them, iii. 204.
Inconsistent with the absolute sovereignty of kings, iii. 218.
Refused giving supplies to their kings in Spain and France, without orders from their principals, iii. 362, 363.
Assyrians, vide Eastern Nations.
That empire wholly abolished on the death of Belshazzar, ii. 83, 84.
Little more known of them than from scripture, ii. 256.
Athalia, more ready to cry out treason than David, ii. 232.
Destroyed the kings race, and by whom himself was killed, ii. 252. vide *Queen*.
Athens, its government not so much approved as that of Sparta, ii. 157.
Banished some worthy men, and put others to death, ii. 158.
The cruelty of thirty tyrants there, ii. 159.
As much inclined to war as Rome, ii. 202.
The thirty tyrants destroyed by Thrasybulus, ii. 284.
Their Ostracism proceeded solely from fear, ii. 347.
Was not without laws when she had kings, iii. 53.
Athletic habit, what, ii. 116, 117, 135.
Attilla, called the scourge of God, and gloried in the name, iii. 79.
Avarice, the evil effects of it, ii. 83.
Augustus, Rome's longest peace under his reign, ii. 122, 253.
What happened in it, ii. 127.
Was worse in the beginning than in the latter end of his reign, ii. 130.
Had thirty mercenary legions to execute his commands, iii. 165, 166.
Whether he truly deserved to be called the head of the Romans, iii. 195.
The name of Augustus is a title belonging to the German Emperor of this day, iii. 260.
Austria, Spain after many revolutions came to this, iii. 285.
Princes of this house, pretend to know their original, iii. 103.
The German Empire came to Rodolphus of this name about three hundred years ago, iii. 105.
What claim this has to the crown of France, iii. 116, 242.
Authors, of great revolutions, their aims, ii. 173.
Axioms, in law, are evident to common sense, and nothing is to be taken for one that is not so, iii. 185.

B

Babel, vide nations.

Babylonian kings, what right is pretended to be in them, i. 371, 372.

Monarchy ruled by force, the stronger turning out the weaker, ii. 88, 89.

How its pride fell, ii. 103.

Little more known of its monarchy than from scripture, ii. 256.

Babylon and Susa, trembled at the motion of the Grecian arms, ii. 301.

There were a people there before Nimrod was king, iii. 168, 169.

Balance of power, how and where it is broken, ii. 377, iii. 291, 292.

Nations have suffered extremely through want of this prudence, in rightly balancing, &c. iii. 323.

In what manner power should be balanced, for the advantage and service of the state, iii. 350.

Banishment, not above five or six men suffered unjustly in the Roman government, in the space of about three hundred years, ii. 113, 117, 163.

The temporary of that, Athenians never accounted as a punishment, ii. 159.

Camillus recalled from it, and afterwards honored, ii. 161.

Barbaroram regnum, ii. 351.

Baron, the extent of the name, iii. 223, 224, 239.

Baronagium, what, ii. 27, iii. 221, 223.

Bartholomew de las Cassas, (a Spanish bishop) his admirable saying concerning the office of a king, i. 387.

Bassampierre, his saying about Rochel, ii. 329.

Bastards, those children can inherit nothing, ii. 46, 47.

Declared with relation to crowns, ii. 53.

Advanced before legitimate brethren, ii. 141, 142. iii. 110, 111, 114, 253.

In some places wholly excluded, ii. 264.

Beggars, of a king to Samuel, such as would not be denied, ii. 263, 264.

Parliaments, no beggars, iii. 89, 90.

Belial, who his son, ii. 79.

Bellarmin's tenets, i. 316, 318, 331, 332, 335, 336, 351.

Benjamites, how they prepared for their defence, ii. 72. 73.

Best men, content with a due liberty under the protection of a just law, ii. 185, 186, iii. 127, 129.

Have ever been against absolute monarchy, ii. 189.

Despised, hated, and marked out for destruction, ii. 327, iii. 129.

Have their affections and passions, and are subject to be misled by them, ii. 322, iii. 155.

Were so esteemed who destroyed tyranny, iii. 457.

When they had need to fear, iii. 19.

Can never wholly divest themselves of passions and affections, iii. 177.

Birthright, gives no right to sovereign dominion, ii. 38, 39.

Some have been accused of suppositious births, ii. 121, 122.

Bishops, the king's power in making them, ii. 312.

What words of servitude are said to be introduced by them amongst us, iii. 40.
Blake, admiral, the terror his fleet struck every where, ii. 334.
Blood, by God's law, that man's is to be shed, who sheds another's, iii. 13, 14.
The nearest in blood set aside, when it was thought more convenient to advance others, iii. 108, 109, 110.
Bocalini, the princes of Europe angry with him for his definition of a tyrant, vide i. Cent. 76, Advertisement, ii. 352.
Bought and sold, how places come to be so, ii. 294, 298.
Senates and people cannot so easily be, ii. 293, 298.
Bourbon, Henry, of that name, not admitted to the crown, till he abjured his religion, and promised to rule by law, ii. 361.
Bracton, his words, *Omnes sub eo, et ipse sub nullo*, &c. how to be understood, iii. 10, 12.
What he calls *esse sub lege*, iii. 56, 66.
What he says the king is obliged to do by his oath, iii. 193, 194.
His saying about evil or unskilful judges, iii. 230.
Brethren, all so by nature, i. 359.
Nature abhors a difference in species between them, ii. 12.
Where a fraternal equality continued, ii. 19, 20.
Are equals, ii. 37.
What advanced some above the rest, ii. 65, 66.
The governed, so called by their magistrates, iii. 310.
Bribery, natural to courts, ii. 170, 171, 288, 290.
Seeks the largest bidder, ii. 214.
Cannot corrupt, where virtue is preferred, ii. 292.
The way to prevent it, ii. 294, 296.
A noble person turned out of a considerable office, as a scandal to the court, for being an enemy to this vice, ii. 303.
Parliaments not so easily to be prevailed upon, iii. 366.
Britain, shamefully lost, ii. 124.
Kings imposed upon the Britains by the Romans, and to what end, ii. 405, 111, 196.
Severe assertions of their liberties, ii. 122.
Though they chose commanders to their wars, yet they kept the government in themselves, iii. 208.
Ever had their great councils to determine their most important affairs, iii. 211.
Brutus found it dangerous to be thought wise, and why, ii. 243, 265.
Buchanan, joined to Coleman, i. 316.
His character of king James, ii. 358.
Concerning the violation of the laws of Scotland, iii. 64.
Burgundy, continued in Hugh Capet's eldest son Robert, and his descendants, for ten generations, iii. 116.

C

Cæsar, of giving him his due, i. 327. ii. 466.
Julius, subverted all order, by invading the supreme ma-

gistracy by force, ii. 105, 147, 468. iii. 310.
Worse than Tarquin, ii. 153.
By what means he set up his tyranny, ii. 171, 444.
Cæsar, Julius, scarce any prince had so many good qualities, till they were extinguished by ambition, ii. 173.
Designed to make himself a tyrant, ii. 180.
Thought all things lawful when the consulate was denied him, ii. 259.
When the power of the Romans was expressed by this name, ii. 466.
Had a diadem offered him by Mark Anthony, iii. 39.
How observant he was of his word, when taken by pirates, iii. 92.
The state of the Roman empire after his usurpation, iii. 145.
Augustus, his power not given, but usurped, iii. 165, 166.
Julius, what account he gives of our affairs here (in Britain) iii. 171, 208.
When, if ever, fear entered into his heart, iii. 209.
Cæsars, never called till the 6th age of Christianity, iii. 262.
Julius, in despair, would have killed himself. iii. 310.
Cain, had no dominion over his brethren after Adam's death, i. 449.
From whence his fear (that every man would slay him) proceeded, ii. 402.
Caligula, his wish that the people had but one neck, i. 331, 426, ii. 242, 309, 315.
A monster of mankind, i. 370, iii. 62.
His making love to the moon, i. 409.
His expedition, when he said he had subdued the sea, ii. 124.
Valerius Asiaticus appeased the guards, by saying, he wished he had been the man had killed him, ii. 246. iii. 62.
Murdered by his own guards, ii. 254.
Affected the title of being called God, which Claudius Cæsar calls *Turpem caii insanium*, ii. 345. iii. 39.
Whose minister he might be said to be, iii. 32.
Said of him, that no man ever knew a better servant, or a worse master, iii. 51.
Wherein he placed his sovereign majesty, iii. 146.
Calvin, his opinion of the government instituted by God, ii. 63, 70.
Camden, his credit forfeited, by a great number of untruths, iii. 220.
Campus Martius, was the land that belonged to the kings of Rome (not above ten acres) afterwards consecrated to Mars, ii. 453.
Cardinals, the respect paid them, who have the power of choosing Popes, ii. 13.
Carthage, how she grew to that excess of power that only Rome was able to overthrow, ii. 134, 205.
Castile, the lords thereof had no other title for many ages than that of Count, which was afterwards changed to that of King, without any addition to the power, iii. 261.

Concerning the states thereof erring, iii. 304.
Catiline, his temper, ii. 136.
One of the lewdest men in the world, ii. 171.
Cesset Processus, said to be annexed to the person of the king, iii. 343.
Ceylon, an Island in the East Indies, where the king knows no law but his own will, iii. 353.
Change, of government, no proof of irregularity or prejudice to it, by those that have right, ii. 110, 150.
Nothing found more orderly, ii. 38.
A mortal one in root and principle, ii. 43.
In government unavoidable, ii. 44.
What changes deserve praise, ii. 45.
Where the wisdom of it is shewn, ii. 153.
Where they are requisite sometimes, iii. 178.
What are for the worse, iii. 293.
Charter, of liberty, not from men but from God, iii. 264.
Parliaments interposed their authority in these matters, iii. 300.
Chatham, the city of London's dread at the Dutch fleet's burning the British fleet there, ii. 213.
Cheat, of Mario Chigi, brother of Alexander VII. upon the sale of corn, ii. 305, 476.
Child, or children, a wise one Eccl. 4, 13, i. 366, 410, ii. 59, 338, 476.
Their duty is perpetual, i. 417, 447, iii. 395, 397, 407.
Of God and of the devil, i. 421, 425.
If children then heirs, i. 454.
Woe to thee, O land, when thy king is a child, i. 456. ii. 55.
On what account children are admitted to rule, ii. 56.
What understood by the word child, ii. 58.
They do not always prove like their parents, ii. 298, iii. 66.
Children, the danger of having them to be kings, ii. 339.
The law gives them relief against the severities of their parents, ii. 404.
Were punished with death, and for what, ii. 404.
Christianity has been split into variety of opinions, ever since it was preached, ii. 207.
The first professors were of the meanest of the people, iii. 30.
St. Paul's work was to preserve the professors of it from errors concerning the state, iii. 31.
Sufficiently proved to be ancient, if proved to be good and true, iii. 173.
Cities, consist of equals, i. 431, 439.
What makes them free, iii. 165.
Cives, vide Incolæ.
Civil war, vide war.
Cleanthes, his philosophic reply to Aristippus, about flattery, ii. 291.
Clergy, the veneration our ancestors had for them, iii. 218.
Collectors, their extortions, ii. 303.

Commanders, after the captivity, who thought most fit, i. 361, 362.
Of armies, who thought best to be made so, ii. 432.
The best among the Greeks and Romans in their times, would not know how to manage an army now, iii. 290, 291.
Where they have been put to death for misbehavior, &c. iii. 301.
Commands, of a master, how far the servant is bound to obey them, &c. iii. 369, 370, 371.
Commission, from God, what, i. 423.
They who hereby grant authority, do always retain more than they give, iii. 179, 363.
Comitia Centuriata, what, iii. 53.
Commons, whether they had a part in the government, iii. 215.
Always had a place in the councils that managed it, iii. 218.
Many of them in antiquity and eminency, little inferior to the chief of the titular nobility, iii. 219, 227.
The nation's strength and virtue in them, iii. 227.
How all things have been brought into the kings, and their hands, iii. 293.
Yet never can be united to the court, iii. 293.
Have refused to give their opinion in many cases, till they had consulted with those that sent them, iii. 302.
Commonwealths, for what end instituted, i. 310.
All the regular kingdoms in the world are so, i. 350, 430.
Of Italy, not without valour and virtue, ii. 130.
How they seek peace and war, ii. 200.
Whether better to constitute one for war or trade, ii. 205.
Another sort composed of many cities associated together, and living *æquo jure* ii. 207.
Seldom advance women, children, or such like, to the supreme power, ii. 283.
In them all men fight for themselves, i. 286.
When the laws are abolished, the name also ceases, ii. 286.
Less slaughter in these than in absolute kingdoms, ii. 301.
Of Greece and Italy, why called nurseries of virtue, ii. 307.
Justice very well administered in them, iii. 20.
How they may be saved from ruin, iii. 296.
Competitors, sovreigns do impatiently bear them, i. 347.
Where their own swords have decided their disputes, ii. 231, 264.
Contests between them relating to the crown, are often very bloody, ii. 268, 271, 273, 277, 278, 280, 281.
Compulsion, he that will suffer himself to be compelled, knows not how to die, i. 419.
Conquest, what is so called, i. 353, 380, 381.
William the First, had the

name of conqueror odiously given to him, ii. 34.
The extent thereof, not the only thing to be considered, ii. 123, 124.
Some commonwealths hereby designed to enlarge their territories, ii. 203.
The king cannot dispose of a conquered country, because it is annexed to the office, ii. 180.
It is the people that conquer, not any one man by his own strength, ii. 192.
Conscience, how it ought to be regulated, iii. 95.
Consent, general, to resign part of their liberty for the good of all, is the voice of nature, i. 339, 353, 383.
First conferred power, i. 247, 251, 380. ii. 19, 20, 54.
Government arises from it, i. 381, 385. ii. 20, 24, 35, 384.
The right of magistrates essentially depends upon it, ii. 24, 25, 351. iii. 104, 156, 170.
None to tyrannize, ii. 25.
No complete, lawful power, without it, ii. 29, 54, 189, 234.
Of the three estates in many places required to pass a law, ii. 371.
Whatsoever proceeds from it, must be *de facto* only, iii. 257.
Constantine, the great, with what blood he was polluted, ii. 266, 375.
His power kept up hereditary, but with extreme confusion and disorder, i. 382.
Constitutions, of every government, to whom referred, i. 382.
Humanity subject to corruption, and therefore to be reduced to their first principles, ii. 111.
Where new ones are necessarily required, ii. 151.
That the best, which is attended with the least inconveniences, ii. 163.
Who endeavour the subversion of them, i. 201. iii. 295.
Of commonwealths, various, ii. 201. iii. 254.
Of the northern nations that invaded the Roman empire, ii. 204.
The temper of that of the United Provinces, ii. 210.
Good ones remain, though the authors of them perish, ii. 217.
The salutary ones made by men, God approves and ratifies, iii. 22.
Of a state, that aims at perpetuity, iii. 50.
Are made for and by the people, iii. 139.
What the imperfections of all human constitutions, iii. 177.
Our ancient, has been wholly inverted, iii. 227.
What are most to be commended, iii. 287, 320.
Of no value, if there be not a power to support them, iii. 287.
Consuls, made of Plebeians, how seldom chosen, and with what prudence, ii. 111.
Represented kings, and were vested with equal power, ii. 139, 141. iii. 43, 269.
Were created after the expulsion of Tarquin, ii. 152, 375.

Consuls, strangers raised to that honour, iii. 269.
Though supreme in power, yet subject to the people, ii. 236, 394, 447.
Marius continued five years in the office, ii. 375.
Only for a year, ii. 393.
Title of dread sovereign might justly have been given to them, iii. 269.
If they grew insolent, how they might be reduced, iii. 288.
Contracts, how framed between nations and their kings, ii. 409, 434, &c. iii. 281, vide Judges, Nations, Original.
Entered into by princes before their investiture, iii. 28.
The breaking them overthrows all societies, iii. 90.
In writing, said to be invented only to bind villains, and why, iii. 91.
All are mutual, and whoever fails of his part discharges the other, iii. 98.
Contrariorum contraria est ratio, iii. 32.
Coriolanus, duly condemned by the Romans, ii. 160.
Controversies, with other nations, the decision of them left to judges chosen by mutual agreement, iii. 331.
Coronation oath, ii. 39, 42, 54, 55, &c.
Norman kings obliged to take it, iii. 10.
How far the British kings are obliged to observe it, ii. 83, 85, 90, 91, 92, 93. iii. 190, 273.
Corporations, or bodies politic, what places were thought fit by the king and council to be made so, iii. 299.
Corruption, natural to courts, instances given, ii. 63, &c. 71, 287.
Of ministers in foreign courts, ii. 192, 193.
The effect of that which proceeds from the government in particular instances, ii. 223, iii. 335.
Of a people, tends to tyranny, ii. 248.
Makes princes' titles good, and how, ii. 255.
Where it certainly most abounds, ii. 286, 289, 294.
Must always be opposed by free governments, and why, ii. 289.
The basest, but most lucrative traffic, ii. 294.
In the head, must necessarily diffuse itself into most of the members of the commonwealth, ii. 295, 331.
A just prince that will hear his people's complaints himself, prevents it, ii. 298.
Mankind naturally propense to it, ii. 297, 299.
Of judgment, proceeds from private passions, iii. 61.
Of Members of Parliament, iii. 370.
Counsellors, made choice of according to the temper of the prince, i. 324. ii. 76, 77, 319.
Signify little to an absolute monarch, ii. 193, 223.
In the multitude of them generally is safety, ii. 302.
Whether those of the king are exposed to punishments, and for what, iii. 345.
Council, of seventy chosen men, ii. 69.

God's counsels are impenetrable, ii. 102.
A wise and good one cannot always supply the defects, or correct the vices, of a young or ill disposed prince, iii. 78.
Where it is of no use, unless princes are obliged to follow it, iii. 80.
Of Toledo, what it made the prince to swear, before he was placed in the royal seat, iii. 118.
Of what persons it anciently consisted, iii. 222, 223, 299.
General, how expressed anciently by authors, iii. 231.
When the boldest are most safe, iii. 326.
The king is obliged to act *cum magnatum & sapientum consilio*, iii. 228.
He can speak only by their advice, and every man of them is with his head to answer for the advice he gives, iii. 376.
Council-Table, the proceedings of, jurisdiction of it regulated by 17 Carolus I. cap. X. iii. 203.
Courtiers, what things are inseparable from their lives, ii. 295.
Their phrase is, to make as much profit of their places as they can, ii. 295.
A wise prince's saying to some about him of such, ii. 296.
Wherein their art consists, ii. 312. iii. 348.
The modern ones, by their names and titles, what they are apt to put us in mind of, iii. 219.
When they speak most truth, iii. 271.
Of Philip the III. and IV. of Spain, their sottishness, iii. 297.
Cowards, the cruelest of men, ii. 346.
Crown, how the English became hereditary, ii. 46, 50.
Changed from one family to another by the estates of the realm, ii. 143, 395, 396. iii. 112, 114, 204, 205.
Comprehends all that can be granted to the most violent and vicious, ii. 257.
Hereditary or elective, it has its defects, ii. 297.
The Spartan transported into nine different families, ii. 355.
Of France is from the people, ii. 360.
Where none would accept it, but such as did not deserve it, ii. 376.
Arminius slain for aiming at one, iii. 42.
Of England, upon what conditions accepted, iii. 95, 96.
Five different manners of disposing crowns esteemed hereditary, iii. 101.
Of Spain not fixed in a line, but disposed of as the nobility and people thought fit, iii. 110.
Many and bloody contests for one, iii. 156, 157, 275, 296.
The demesnes of it cannot be alienated, iii. 240.
The parliament's power of giving and taking it away, iii. 296.
Some have feared the lusts of it, iii. 322.
He that wears it cannot de-

termine the affairs which the law refers to the king, iii. 339, 343, 344.
Curio, by corruption made an instrument of mischief, who had been an eminent supporter of the laws, ii. 175.
Custom, the authority of it, as well as of law, consists only in its rectitude, iii. 173, 175.
Had its beginning and continuance from the universal consent of the nation, iii. 347.
The reason why we pay customs, iii. 373.

D

David, the most reverend king, had his posterity deprived, and his kingdom at last came to the Asmonean race, i. 362, 363.
Chose and anointed king by the tribe of Judah, ii. 54, 419.
Slew the son of Rimmon, and why, ii. 54.
Not without his infirmities and punishments, ii. 90.
Who were his adversaries notwithstanding the justice of his cause, ii. 419, 251.
His affection towards his people, ii. 404.
His resisting of Saul without assuming the power of a king, ii. 414, 415, &c.
How his heart smote him when he had cut off Saul's skirt, ii. 417.
His war with Saul, how grounded, ii. 418.
There were many rebellions against him, ii. 422, &c.
How he feared men more than God, ii. 444.
Why he commanded Solomon not to suffer Joab to go to the grave in peace, iii, 23.
Wise as an angel, iii. 304.
Death, of no eminent Roman, except one, for a long time, ii. 112.
Citizens to be condemned in public by the Roman law, ii. 166.
Of Barnewelt, and De Witt, ii. 210, 211.
Often the reward of such services as cannot be sufficiently valued, ii. 265.
Of the nearest relations, *regnandi causa*, ii. 269.
The bitterness of it, how assuaged, iii. 370.
Very few suffered in Sparta, for above eight hundred years, iii. 25.
Decemviri, only for a year, ii. 146.
For two years, iii. 59.
To regulate the law, i. 152. iii. 52.
Patricians favoured them, ii. 228.
Proceeded against no private men, when they continued beyond their time, ii. 235.
Used with great gentleness, ii. 285.
The Romans only beaten under them, iii. 333.
The power given to them, *sine provocatione*, was only in private cases, iii. 59.
Why the people destroyed both their power and them, iii. 59.
Decision, of the most difficult matters, anciently left to the priests in all countries, iii. 352.
In England, where made by judges and juries, and

where by Parliament, iii. 345, 346.
Defence, all terminates in force, ii. 215, 216.
Whether better for every man to stand in his own defence, than to enter into societies, ii. 245.
Of one's self, natural, ii. 431, 463.
Delatores, see Roman Empire, ii. 104.
Delegated persons, their powers, to whom referred, ii. 24, 28, 31.
In general assemblies, ii. 31.
How binding the acts of such are to the whole nation, ii. 35.
Where the king acts by this power, iii. 346.
Can have no power but what is conferred on them by their principals, iii. 356.
How those in the United Provinces, and in Switzerland are used, iii. 358.
Deputies of Castile refused in the cortez to give Charles V. the supplies he desired, and why, iii. 362.
Deliverers, of their countries, from oppressions, how they have been esteemed in all ages, i. 325.
What gifts God bestowed on them, i. 366. ii. 66, 84, 102.
Often rewarded with inheritances, ii. 24.
Their actions carry their own justification, ii. 246.
Democracy, God said to be the author of it, i. 333. ii. 74.
Perfect, what, i. 352.
For whom best, i. 434. ii. 70, 138.
How instituted, i. 445.
A democratical embassy, ii. 69, 70.
Of the Hebrew government, ii. 69.
Never good but in small towns, ii. 138, 155, 156.
Pure, if it be in the world, the author has nothing to say to it, ii. 179.
Where it would prove most just, rational, and natural, ii. 184.
To what mistakes most liable, ii. 228.
With whom in a strict sense it can only suit, ii. 370.
Denmark, the last king thereof overthrew, in one day, all the laws of his country, ii. 176.
The crown elective, till 1660, and then made hereditary, iii. 104, 253.
In some parts thereof the whole volumes of their laws may be read in a few hours, iii. 185.
The authority of their kings said to have been for above 3000 years, iii. 208.
Noblemen and gentlemen the same there, iii. 225.
Deposition, of princes, said to be the doctrine of Rome and Geneva, i. 316.
For misgovernment, and others placed in their rooms, ii. 27, 51, 143, 144, 338, 361, 421. iii. 48, 171.
Kings when deposed lose the right of sending ambassadors, iii. 340.
The practice of France and other countries, ii. 51, 149, 272, 276, 342, 361. iii. 110, 111, 113, 115, 204.
For religion, differing from

the body of the nation, ii. 51, 56, 143.
If they become enemies to their people, ii. 242.
For their ill lives, iii. 29, 30, 31.
Of Wamba, a Gothic king, who was made a Monk, after he had reigned many years well, iii. 109.
Desertion, the cause of it, ii. 194.
Common to all absolute monarchies, ii. 194.
Of soldiers, ii. 230, 233, 234.
Detur, Digniori, i. 364, 365, 386, 434.
Dictator, from whence his power arose, ii. 112, 448.
Cæsar made himself perpetual, ii. 107.
Made occasionally at the beginning, ii. 146, 148, 409.
A mortal change in root and principle, ii. 143.
Why Mamercus and others had this honour, ii. 160, 325.
Though supreme, yet subject to the people, if they transgressed the law, ii. 236, 390. iii. 271.
His power but for six months at most, ii. 392. iii. 43, 58.
Cammillus in his fourth dictatorship, threatned with a fine, ii. 392.
The commission that was given, what, iii. 252.
How high the Romans carried the power, iii. 270.
None ever usurped a power over liberty until the time of Sylla, iii. 289.
Diets vide Estates of the Realm and Parliaments, General Assemblies.
Difference, between a lawful king and tyrant, i. 451, 456. ii. 344, 455. iii. 73.
Between lord and servant, in species and not in degree, i. 456.
Between brethren, only in proportion, i. 456.
Between men fighting for their own interest, and such as serve for pay, ii. 350.
Between senates and absolute princes, ii. 385.
Between magistrates to whom obedience is due, and to whom not, iii. 36, 39.
Between good and bad princes, is from the observation or violation of the laws of their country, iii. 49.
Dioclesian's saying, *Bonus Cautus, Optimus, imperator, venditur*, ii. 288.
What made him renounce the empire, ii. 288.
Dionysius, his tyranny destroyed by the Syracusians, i. 231.
His character, i. 370. ii. 314, 315.
Diogenes, his saying of him, ii. 315.
Discipline, the excellency of the Roman, ii. 168, 169, 198.
The like in all nations that have kept their liberty, ii, 199.
The effects of good and bad, ii. 325, 327, 330.
The excellency of the Spartan, ii. 355. iii. 25.
Dispensing power, our kings have it not, beyond what the law gives them, iii. 159.
Dissimulation, what, ii. 341.
Dissolute persons, fittest subjects for absolute monarchs, ii. 62, 172, 247.
Abhor the dominion of the law, ii. 183, 318.
Doctrine, some by that which is

false, poison the springs of religion and virtue, iii. 131.
Dominion, equally divided among all, is universal liberty, i. 357.
Of the whole world, cannot belong to one man, i. 393, 398.
Nor over a nation, ever unseperably united to one man, and his family, i. 431, ii. 12, 13, 19, 39.
Deeds by which the right of it is conferred, ii. 54.
Usurped by the ruin of the best part of mankind, ii. 171.
Of France not to be alienated, ii. 364.
Every child of a parent cannot inherit it, ii. 380.
How and by whom it was conferred, ii. 381, iii. 261.
Implies protection, iii. 266.
Dominus, its signification, ii. 13.
The Romans often called lords of the world, iii. 229.
Domitian, his character, ii. 309.
Tacitus calls him an enemy to virtue, iii. 19.
Duels in France, who only could refuse challenges from any gentleman iii. 224.
Dukes of Venice, Moscovy, &c. iii. 240.
Duke, earl, and viscount, the names of offices, iii. 240.
Where these names are subjects, and where little less than sovereigns, iii. 261.
Duty arising from a benefit received, must be proportionable to it, ii. 407.
Of a magistrate, iii. 19.
Of no man to deny any one that which is his due, much less to oppose the minister of God, in the exercise of his office, iii. 31.
What to be expected from and rendered to them, iii. 44.

E

Eastern nations what remarkable for, ii. 60.
Force is the prevailing law with them, ii. 87, 88.
Where, and are still under the government of those, whom all free people call tyrants, ii. 457. iii. 140.
Solomon's prudent advice to persons living under the government of these countries, ii. 475.
Edward, the *Second*, imprisoned and deposed by his Parliament, iii. 365.
The *Fourth*, his wants supplied by fraud and rapine, iii. 378.
Election, most princes chosen by the people, ii. 24, 25, 27, 38, 57.
Proved from scripture instances, ii. 27, 32, 38, 54, 55, 68, 414, 418.
From examples of the Saxons, ii. 32, 414, 415, iii. 27, 28, 220, 221, &c.
Makes a right, ii. 36. 53, 54.
The various ways of electing princes, ii. 141.
Frequent choosing of magistrates, makes nurseries of great and able men, ii. 198, 217, 321.
The prudence of elections surpasses the accidents of birth, ii. 210, 220.
Of kings in France, ii. 362, 363. iii. 111, 112, 113.
Of Charles Gustavus to the crown of Sweden, iii. 250.

The various customs used in choosing parliament-men, iii. 298, 299.
Elective kingdoms, iii. 46.
Elizabeth, what powers made her capable of the succession, iii. 123, 128.
Her character and failings, iii. 153, 154.
The Earl of Moreton sent ambassador to her, by the Estates of Scotland, to justify their proceedings against Queen Mary, iii. 327.
None so much imitated Henry V. as she, iii. 381.
Eminent, the most, ought only to be advanced to places of public trust and dignity, i. 385, 386, 444, 445.
Most obnoxious to be taken off, ii. 114, 162, 163, 315.
Are most feared, ii. 265, 271.
When these are most impatient, ii. 271.
The pillars of every state, ii. 271, 272.
Emperors, Roman, three or four, and at one time thirty, who called themselves by this name, ii. 149.
Endeavoured to make their power hereditary, ii. 386.
The height of their regal majesty, ii. 427, 428.
St. Austin's and Ulpian's saying, that they were subject to no law, and why, ii. 474. iii. 150.
Some foully polluted themselves with innocent blood, iii. 33.
The title never solemnly assumed by, nor conferred on them, iii. 39, 40.
Theodosius confessed it was the glory of a good one to own himself bound by the law, iii. 150.
The present one in Germany, an account of him, iii. 305, 306.
Empire, grounded on the Pope's donation, i. 387.
Gained by violence is mere tyranny, ii. 41, 46.
Acquired by virtue, cannot long be supported by money, ii. 106.
The calamities which the Roman suffered, ii. 154.
Settled in Germany, ii. 274.
What made Dioclesian to renounce it, ii. 288.
Under what sort of governors it was ruined, ii. 323.
Of the world, divided between God and Cæsar, ii. 385. iii. 134.
Not obliged by any stipulation of the Emperor, without their consent, iii. 340.
Enacting laws, continued in the people of Rome, ii. 112, 123.
Enemy of a nation, who, i. 385. ii. 234, 307, 315.
Every man is a soldier against him, ii. 229.
Who the most dangerous to supreme magistrates, ii. 245. iii. 124.
Who is so to all that is good, ii. 290.
Who is so to virtue and religion, is an enemy to mankind, ii. 307, 313.
Those that know they have such abroad, endeavour to get friends at home, ii. 461.
Sycophants, the worst enemies, iii. 82, 381.
How a king declares he has none when he comes to the crown, iii. 157, 158.

A prince that seeks assistance from foreign powers, is so, iii. 316.
England, how the crown became hereditary, ii. 46.
The state of it since the year 1660, ii. 137.
How and when the glory of her arms were turned into shame, ii. 216.
How the succession of her kings has been, ii. 262, 263. iii. 205.
Her wars with France, merely upon contests for the crown, ii. 276.
Her miseries by her civil contests, ii. 279, 280.
When her reputation and power was at a great height, ii. 334.
Whether her kings were ever proprietors of all the lands, ii. 441.
The naked condition of the Britons at the time of Cæsar's invasion, ii. 463.
Has no dictatorial power over her, ii. 468.
Ever a free nation and chose her own kings, iii. 95, 233.
Made her own laws, iii. 209, 212.
We know little of the first inhabitants, but what is involved in fables and obscurity, iii. 171.
The great number of our laws makes them inconvenient, iii. 185.
Wherein she ought to be compared to Rome, iii. 196.
Brave, in the time of William I. when she saw her laws and liberties were in danger, iii. 199.
What has cost her much blood, and was the cause of their difficulty, iii. 205.
Their security, the best anchor they have, ought to be preserved with all possible care, iii. 367.
The general impairing of her may be dated from the death of Henry the Fifth, iii. 373.
Epaminondas, forfeiture of his life, (though saved) for serving his country longer than the time limited, ii. 235.
Ephori, established to restrain the power of kings, ii. 45, 318, 356.
When they were created, iii. 319.
Equality, in all by nature, i. 313, 318, 328, 336, 357, 358, 380, 432. iii. 161, 329.
Just among equals, i. 432.
Civil society, composed of equals, i. 446.
Leagues do not imply absolute equality between parties, ii. 55.
Where 'tis hard to preserve a civil equality, ii. 116.
Popular, to what it is an enemy, ii. 249.
Of right, what is called liberty, ii. 381.
Kings under this law with the rest of the people, ii. 426.
Equals cannot have a right over each other, iii. 264, 331.
No nation can have an equal within itself, iii. 331.
Error, all subject to it, ii. 117, 160, 229, 316.
Discovered by the discourse of a wise and good man, i. 284.

By it popular governments may sometimes hurt private persons, ii. 308.
A polite people may relinquish those of their ancestors, which they had been guilty of in time of their ignorance, iii. 175.
Would be perpetual if no change were admitted, iii. 178.
Where they are in government, though it may be easy for a while, yet it cannot be lasting, iii. 370.
Escheat of the crown, for want of an heir, ii. 145, 148.
Estates of the realm, divided the kingdom of France, ii, 263. iii. 113, 114.
Their power of voting, ii. 372.
Have disposed of crowns as they pleased, iii. 112, vide Parliaments, Assemblies General.
Evil, what is so of itself, by continuance is made worse, and on the first opportunity is justly to be abolished, iii. 208.
Eutropius, when a slave, picked pockets, &c. but when a minister, he sold cities, &c. ii. 294.
Excommunication, denounced on the violators of *Magna Charta*, iii. 87.

F

Fabius Maximus, one of the greatest and best of men that ever Rome produced, ii. 113.
Fabius Quintus, in danger of his life for fighting without orders, though he gained a signal victory, iii. 270.
Factions about regal power and succession, how to be prevented, iii. 242.
Of the Guelphs and Ghibelins, ii. 304, 305.
Virtue and vice, were made the badges of them, ii. 319.
Faith, implicit, to whom it belongs, i. 320, 322. iii. 130.
Families, none more ancient than others, and why, i. 407, 408.
What is required to make a complete one, i. 448.
When British ancestors sent to seek a king in one of the meanest of them in Wales, ii. 267.
None that does not often produce weak, ignorant, or cruel children, iii. 47, 48.
Famous, men for wisdom, virtue and good government, ii. 171, 186, 218.
Have eyes and will always see the way they go, iii. 130.
Fathers, the power of fatherhood, belongs only to a father, i. 351, 353, 407, 418.
Cruel princes, no fathers of their country, i. 384. ii. 455, 456. iii. 79, 80.
Their character indelible, i. 406, 418, 447.
Adoption of them absurd, i. 410, 413, 414, 418.
Who deserves the obedience due to natural parents, i. 413.
By usurpation, i. 423, 424, ii. 23.
The fifth commandment how explained, i. 425.
Who has the right of fathers, i. 447, 448.
When it ceases, i. 447. ii. 15.
Embrace all their children alike, ii. 9, 10.

There is a sort of tyrant that has no father, iii. 90, 91.
Favourites, are always the best of men, i. 412, 413.
Their influence over princes, ii. 85, 86.
Whom the monarch commonly makes such, ii. 290.
How their exorbitant desires are gratified, ii. 386.
Faustina, two of them who by their ascendancy tarnished the glory of Antoninus Pius and Marcus Aurelius, ii. 289.
Fear, what it transports a wicked man to do, ii. 346.
Renders communities gentle and cautious ii. 349.
Puts people on desperate courses, ii. 375.
What is the measure of it to that magistrate who is the minister of God, iii. 26.
Fear, when, if ever, said to enter Cæsar's heart, iii. 209.
Felicity, man's where placed, i. 314.
Females, vide women.
Excluded from all offices in the commonwealth, iii. 103.
Figurative expressions, all have their strength only from similitude, iii. 311.
Filmer, his right of all kings, i. 309. ii. 62, 65, 67.
Takes the world to be the patrimony of one man, i. 310, 312, 313. ii. 344.
Uses not one argument but what is false, or cites one author, but whom he has perverted or abused, i. 314. iii. 72.
And his partisans, why reserved to this age, i. 319. iii. 201.
His business is to overthrow liberty and truth, i. 320. iii. 378.
His bitter malice against England, i. 327.
Makes God the author of democracy, i. 332.
His lord paramount, over children's children to all generations, i. 338, 339, &c.
His opinion to whom all kings are reputed next heirs, i. 367.
Where his kingly powers escheats on independent heads of families, i. 390, 407.
His adoption of fathers, of provinces, for what, i. 414.
His notion that we must regard the power, not the means by which it is gained, i. 416. ii. 23, 416. iii. 148.
His destruction between *eligiere* and *instituere*, ii. 37, 39.
His vile abusing of the reverend Hooker, ii. 39, 54.
His notion of begging a king, ii. 68.
Absolute monarchy to be the nursery of virtue, ii. 84.
Attributing stability and order to it, ii. 84, 156.
Imputing much bloodshed, to Rome's popular government, ii. 115.
His back-door sedition and faction, ii. 141, 145.
His opinion, that the worst men in Rome thrived best, iii. 215, 222.
That the nature of all people is to desire liberty without restraint, ii. 183.
His cypher of the form of mixed governments, ii. 190

That there is a necessity upon every people, to chuse the worst man, he being like themselves, ii. 218.
Affirms that more men are slain in popular than in absolute governments, ii. 307.
The extent of his cruelties, ii. 308, 319.
His attributing ignorance and negligence to popular governments, ii. 320.
His notion that the virtues of a prince, supply all distempers of a state, ii. 336.
That there is no such tyranny as that of a multitude, ii. 342.
That kings must be absolute, ii. 342.
His notion of a king's ceasing to be so, ii. 350, 368.
His whimsey about democracy, ii. 371.
That all the people's liberties flow from the gracious concession of princes, ii. 379, 440.
That there is no coming at a king, if he break his contract with the people, ii. 382.
That a father of a family governs it by no other law than his own will, ii. 397.
That patient obedience is due both to kings and tyrants, ii. 398.
That there were kings before any laws were made, ii. 400.
That Abraham, Isaac, Jacob, and Moses were kings, ii. 428.
That Samuel, by telling what they would do, instructed the people what they were to suffer, ii. 429, 433.
That inconveniences and mischiefs are some of the essentials of kingly government, ii. 438.
That all laws are the mandates of kings, ii. 440.
His ridiculous saying "those that will have a king," ii. 445.
That the Jews did not ask a tyrant of Samuel, ii. 455.
That the people's cries are not always an argument of their living under a tyrant ii. 457.
That our Saviour limits and distinguishes royal power, ii. 465.
That the tribute Cæsar imposed was all their coin, ii. 467.
Cites Bracton, as a patron of the absolute power of kings, iii. 10.
That St. Paul's higher powers, meant only a monarch that carries the sword, &c. iii. 16.
That kings are not bound by the positive laws of any nation, iii. 34, 70.
That the original of laws was to keep the multitude in order, iii. 45.
That laws were invented for every particular subject to find the prince's pleasure, iii. 54.
That kings are above the laws, ii. 59.
His opinion when princes degenerated into tyrants, iii. 65.
That tyrants and conquerors are kings and fathers, iii. 74.
That the king swears to observe no laws, but such as in his judgment are upright, &c. iii. 83.

That kings are not obliged by voluntary oaths, iii. 90.
This principle animadverted on, iii. 125, 126.
That obedience is due to a command, though contrary to law, iii. 207, 209.
That the king's perogative to be above the law, is only for the good of them that are under it, iii. 139.
His equivocal king, iii. 146.
His opinion that the law is no better than a tyrant, iii. 155.
That a perfect kingdom, wherein the king rules by his own will, iii. 159.
That the first power was the kingly in Britain, iii. 167.
That all judges receive their authority from the king, iii. 184.
That the power of kings cannot be restrained by act of parliament, iii. 199.
That the king is the author, corrector, and moderator of both statute and common law, iii. 206.
His trivial conceits about parliaments, the time when they began, &c. iii. 206, 213 214.
His notion about usurpers and lawful kings, iii. 243.
That the liberties claimed in parliament, are liberties of grace from the king, and not of nature to the people, iii. 248.
That the people's language is submissive to the king, but his is haughty to them, iii. 270.
That kings may call and dissolve parliaments at pleasure, iii. 288.
Admires the profound wisdom of all kings, iii. 303.
A bitter enemy to all mankind, iii. 353, 354.
His book, here lately reprinted, as an introduction to a Popish successor, iii. 354.
His meaning of "*le roy le veut*," iii. 372, 375, 377.
Flatterers, what the vilest of them all dare not deny, i. 323.
What called by Tacitus, ii. 131.
The Hebrew kings not without them, ii. 251.
Their pernicious advices, to what end given, ii. 258.
Weak princes most subject to them, ii. 269, 270, 287, 292, 327.
Cleanthes, to Aristippus, ii. 291.
By what handle they lead their princes, ii. 313.
Have made their valour ridiculous, ii. 332.
By whom thought the best friends, and msot worthy of great trusts, iii. 130.
The author's wish that princes would abhor these wretches, iii. 194.
Almost ever encompass crowned heads, iii. 348.
Fleets, where the British were not very famous, ii. 334.
Florence, the sedition there, and in Tuscany, ii. 304.
More depopulated now than any part of that province, though formerly in a few hours it could bring together 135,000 well armed men, ii. 305. iii. 141.
Folly, mankind does not universally admit, and perpetually persist in any, i. 392.

Some are fools at forty years of age, ii. 338.
Lord Chancellor Egerton said he did not sit to relieve fools, iii. 93.
Force, where it is the only law that prevails, iii. 147.
What the Romans gained by the valour of their force, ii. 122, 123.
All defence terminates therein, ii. 213, 365.
Those that use it, must perfect their work, or perish, ii. 228.
Of fraud, in opposition to the laws of one's country, is absolutely monarchical, ii. 331.
When the Spartan kings were overthrown by it, ii. 356.
Is generally mortal to those that provoke it, ii. 366.
To be used when there is no help in law, ii. 377. iii. 48, 325.
Can never create a right, ii. 383, 410. iii. 256.
The French under a force they were not able to resist, ii. 440, 441.
What is gained by it may be recovered the same way, iii. 104, 257.
When all disputes about right naturally end in force, iii. 287.
Forfeiture, of liberty' how can it be, iii. 295.
Fortune, of all things the most variable, ii. 101.
How right is made a slave to it, ii. 263, 264.
Of a prince supplies all natural defects, ii. 336.
France, when the salick law was there, i. 403. ii. 48. iii. 101, 102.
Her ancient kings' right, how conferred on them, and what was her ancient government, ii. 45. iii. 254.
Her revenge on England for all the overthrows she received from their ancestors, ii. 137.
Frequently divided into several parties, ii. 149.
Her races of kings then, had been four times entirely changed, ii. 150, 268, 270, 339, 356.
The miserable condition of her people, ii. 191, 272, 273, 332, 333. iii. 285, 374.
Her greatest advantages have been from the mistaken councils of England, ii. 192, 193.
Her bloody contests and slaughters for the crown, ii. 268, 272, 274, 376, 377, &c.
Had ten base and slothful kings, called "*les roy faineans*," ii. 270, 339.
The regal power limited, ii. 275, 362.
Had four kings deposed within 150 years antecedent to the year 1670—ii. 275.
Civil wars were frequent there though less cruel than in more ancient times, ii. 276.
Compared with Venice, ii. 327.
Her soldiers running from their colours, ii. 333.
Her general assemblies continued the exercise of the sovereign power, long after the death of Lewis the XI. ii. 359, 360.
Had never any kings but of her own chusing, ii. 359.
Henry V. of England most terrible to her, ii. 360.

Their laws made by themselves and not imposed on them, ii. 360.
The people have understood their rights, ii. 363.
The reason of the people's miseries, ii. 440, 442, 451, 453.
The right to the crown is in a great measure from the law of that country, instances hereof, iii. 112, 114.
She did not allow her kings the right of making a will, iii. 114.
By whom the power of conferring the sovereignty was exercised, iii. 252.
By the people's increasing the power of their master, they added weight to their own chains, iii. 285.
Her king cannot be called the head of his people, and why, iii. 316.
"*Le roy, le veut*," and "*telle est notre plaisir*," were French rants; but no edict there had the power of a law, till it was registered in Parliament, iii. 376.
The conquest of her, only to be effected by the bravery of a free and well satisfied people, iii. 381.
Franks, soon incorporated themselves with the Gauls, ii. 203.
Fraud, accounted a crime so detestable, as not to be imputed to any but slaves, iii. 196.
All wicked designs have been thereby carried on, iii. 188.
Who delight in it and will have no other ministers but such as will be the instruments of it, iii. 380.
ree, what nations so esteemed, i. 329. iii. 140, vide popular governments.
Men, how to know ourselves such, i. 329. ii. 19, 20, 76. iii. 98, 141.
People scarce ever conquered by an absolute monarch, ii. 83, 97.
Phillip of Macedon confessed his people to be free men, ii. 98.
The Britons were so because governed by their own laws, iii. 208, 209.
Men, or noblemen, exempt from burdens, and reserved, like arms, for the uses of war. iii. 225.
Free cities, what and who made them, iii. 265.
Frugality, the virtues that are upheld by it, ii. 449.
Fruits, of our corrupt nature, ii. 62.
Our labour, ii. 68.
Recovered liberty, ii. 141.
Victory, how gained and lost, ii. 216.
Always of the same nature of the fruits from whence they came, ii. 326.

G

Genealogies, the Hebrews exact in observing them, i. 360. ii. 388.
Of princes nicely to be searched into, would be dangerous to some crowns, i. 394, 396, 400. iii. 256.
Of mankind, very confused, i. 392. ii. 388.
Of being the eldest son of the eldest line of Noah, ii. 383.
Geneva, and Rome, wherein they only can concur, i. 316.
Genoa, how it was governed, ii. 139, 207.
By whom that city was infected, ii. 207.

Gentlemen, at this day comprehends all that are raised above the common people, iii. 224.
Germanicus, his modesty in refusing the Empire, was the occasion of his death, ii. 267. iii. 94.
Germany, how governed, ii. 139. iii. 210, &c.
Equal to the Gauls in fortune, so long as Rome was free, ii. 221, 222.
The power of the German kings, ii. 357.
The power of this Emperor, (viz. in 1643.) ii.
From thence the British original and government is drawn, ii. 26.
When she had no king, iii. 42.
The Emperors thereof restrained by laws, iii. 48.
The western Empire, how it came to Germany, iii. 106.
Tacitus, his account of the people's valour, iii. 210.
Not imaginable, that there people, jealous of liberty, should conquer the country to enslave themselves, iii. 214.
No monarchy more limited, iii. 270.
Gibeonites, got Joshua to make a league with them, by deceit, iii. 92.
Gladiators, were slaves, ii. 116, 129.
Their fury extinguished with their blood, ii. 129.
God, with an equal hand gave to all the benefit of liberty, i. 333.
What sort of kings he approves in scripture, i. 338.
Can save by few as well as by many, i. 340.
Always constant to himself, i. 364. ii. 411.
Never prescribed any rule about dividing the world, i. 395.
The fountain of justice, mercy, and truth, i. 422, 423, 439, &c.
By universal law, gave no rule for the making of kings, ii. 37.
Is our Lord by right of creation, ii. 76.
How he endowed the rulers of his people, ii. 83.
His secret councils impenetrable, ii. 102.
What the usual course of his providence, ii. 133.
Helps those who justly defend themselves, ii. 214.
His general ordinance, ii. 231.
Gave laws to the Jews only, ii. 261.
When he refused to hear the cries of his people, ii. 412, 426, 435.
His anointed and accursed, ii. 418.
A law in Rome, that no God should be worshipped without the consent of the senate, iii. 33.
Good, every one seeks their own, according to the various motions of their mind, i. 383. ii. 21, 343.
The public, the end of all government, ii. 51, 399, 462. iii. 62, 63.
Is more observed in mixed, than absolute ones, ii. 320.
Of mankind, depends upon religion and virtue, ii. 312.
Called evil, and evil good, iii. 20.
Actions always carry a reward with them, iii. 126.
Good and Evil, but three ways

of distinguishing between them, i. 363.
Good men, who deserve to be called so, i. 310.
How they obey their princes, ii. 290.
Know the weight of foreign power, and doubt their own strength, iii. 321.
Goodness, is always accompanied with wisdom, iii. 65.
Gospel, the light of the spiritual man, ii. 312.
Goths, their polity, ii. 139. iii. 147.
For above 300 years never contracted marriages, nor mixed with the Spaniards, ii. 205.
Seized Rome while Honorious was looking after his hens, ii. 222.
Subdued by the Saracens in one day, ii. 332.
Grew famous by the overthrow of the Roman tyranny, ii. 474.
Concerning succession to the crown during their reign, iii. 99.
Not above four, in 300 years time, were the successors of their fathers, iii. 108.
In Spain overthrown by the Moors, iii. 109, 334.
Their kings in Spain never ventured to dispute with the nobility, iii. 205.
Their kingdoms never restored, iii. 334.
Government, the original principles of it to be examined, our own in particular, i. 322. ii. 80.
An ordinance of God, i. 334, 337.
The several forms thereof left to man's choice, i. 334, 337, 359, 382, 383, 395, 397, 406, 444. ii. 9, 17, 18, 21, 60, 109, 138, 179, 184, 370.
Of the lawfulness of changing it, considered, i. 335. ii. 109, 142, 463.
Despotical, differs from the regal, i. 340, 341, 429.
The ground of all just governments, i. 352. ii. 167, 190. iii. 189.
No man has it either for, or from himself, i. 363. ii. 55, 234, 351. iii. 74.
None ever began with the paternal power, i. 370.
To whom the constitution of every government is referred, i. 383.
All for the good of the people and their posterity, i. 422, 433, 451. ii. 21, 55, 65, 80, 123, 179, 213, 214, 219. iii. 78, 174, 277.
Is a coalition of every man's private right into a public stock, i. 429, 431. ii. 17.
Where just, it has ever been the nurse of virtue, i. 430, 442.
Popular, for whom best, i. 434.
For whom instituted, i. 451, 455. ii. 168, 169.
What sort was ordained by God, ii. 68.
The effects of one well ordered, ii. 103.
What only deserves praise, ii. 125, 129.
How the best has been composed, ii. 138, 205.
Regal had a mixture of aristocratical and democratical in them, ii. 144.

Whence the denomination of all is taken, ii. 144, 158, 370.
The foundation remaining good, the superstructures may be altered, ii. 145, 153, 154, 225, 454, 463.
When it cannot subsist, ii. 160.
The effects of a disordered one, ii. 164.
All subject to corruption and decay, ii. 178.
None imposed on men by God or nature, ii. 182, 189.
Mixed composed with absolute, ii. 185. iii. 353.
What the only just one, by consent of nations, ii. 189.
What may be imputed to it, ii. 198.
None ever freer from popular seditions than Switzerland, ii. 209.
That the best which best provides for war, ii. 211, 215, 218.
None without civil wars, tumults and seditions, ii. 226, 300, 303.
The end for which it is constituted, ii. 243, 246, 248. iii. 266.
The Roman, how introduced, ii. 253.
Exposed to the most infamous traffic, ii. 294.
Of what parts it may consist, ii. 370.
Is a great burden to the wise and good, ii. 375, 376, iii. 49, 78, 142, 143.
To reform it is to bring it to its first principles, ii. 367. iii. 334.
Questions concerning the British government must be decided by their own laws, and not by the writings of the fathers, ii. 470.
St. Paul's obedience to higher powers, must be understood to all sorts of government, iii. 16.
What would make all in the world *Magno Latrocinia*, iii. 35.
When the ends of it are accomplished, iii. 146.
Most of them have been mixed, at least good ones, iii. 147, 354.
What only is reckoned good, iii. 162.
The British, the same with the Roman in principle, though not in form, iii. 196.
From whence the great variety of them proceeds, iii. 287.
The Englsih not ill constituted, iii. 288.
By what means the foundations may be removed and the superstructure overthrown, iii. 292.
In a well constituted one, the remedies against ill magistrates are safe and easy, iii. 319.
Wisdom and valour required for the institution of a good one, iii. 336.
Where it is entirely to be changed, or reformed according to its first institution, iii. 381.
The blessings of an absolute one, iii. 354, 355.
Its establishment is an arbitrary act, wholly depending upon the will of man, iii. 367.
Governors appointed to execute laws for the good of the people, i. 431, 436. ii. 12, 236. iii. 334.
The law appoints, helps for

their infirmities, and restrains their vices, ii. 375.
The people's creature, ii. 429, 448. iii. 264, 331.
Where they are removeable, if they will not be reclaimed, iii. 336.
The good and bad make the people happy and miserable in their turns, iii. 352.
Grants of king John to the Pope, declared by Parliament to be unjust, illegal, &c. iii. 88.
What implies an annihilation of some grants, iii. 164.
Where they ought well to be proved, that the nature and intention of them may appear, iii. 236.
Of what nature those of our kings are, iii. 237, 238.
Of lands, where they have been resumed, iii. 239.
Grecians knew no other original title to government, than that wisdom, &c. which was beneficial to the people, i. 378.
Wherein they excelled other nations, iii. 143.
Overthrew the vast armies of the Persians, ii. 95, 96.
Were reduced to yield to a virtue greater than their own, ii. 135.
No absolute monarch amongst them established by law, ii. 157.
Have been, by disorder in government, exposed as a prey to the first invader, ii. 222.
When they were happy and glorious, ii. 301.
Their virtue expired with their liberty, ii. 326.
The word tyrant came from Greece, and what it signified, ii. 455.
Flourished in liberty in the time of Saul, ii. 460.
Grotius, his explanation of sovereign and limited power, ii. 236, 365. iii. 254.
Wherein he justifies subjects in taking up arms, ii. 311.
His making St. Peter and St. Paul perfectly agree, about their different phrases of ordinance of God and ordinance of man, iii. 21.
His saying, *qui dat finem, dat media ad finem necessaria*, iii. 298.
About kings' stipulations and right of sending ambassadors, iii. 239.
Guelphs and Ghibelins, their factions in Tuscany, ii. 131, 304, 305.
Genoa infected with their factions, ii. 205.
Gustavus, (Charles) his confessing to an ambassador, how he ought to reign over the people that had chosen him, iii. 251, 252.
He and his uncle Adolphus were content with the power that the laws of their country gave them, iii. 305.

H

Hannibal killed more great Roman captains than any kingdom ever had, ii. 197.
The Samnites embassy to him, ii. 199.
How he lost the fruit of all his victories, ii. 221.
When he invaded Italy, no country seemed to be of greater strength, ii. 302.
What to be done if he be at the gates, iii. 296.
Hanseatic towns, ii. 209, &c.
Hatred, universal, incurred by princes who always fear

those that hate them, ii. 309, 317, 406.
To all that is good, ii. 314.
Head, why kings are called by that name, and the import of the word both in scripture and profane authors, iii. 308, 309, 310.
The difference between the natural and political, iii. 311.
What the office of a head is in a natural body, iii. 313, 314, &c.
Hebrew judge, different from a king, ii. 67, 68.
Kings not instituted by God, but given as a punishment, ii. 68.
How their government consisted, ii. 199. iii. 267.
Kings, their power exceeded the rules set by God, ii. 351, 366.
What their discipline, ii. 356.
In their creation of judges, kings, &c. had no regard to paternity, ii. 382.
Like to their neighbours in folly and vice, and would be like them too in government, ii. 412.
Their power greater than what the law allows to British kings, ii. 475.
Whether the law given them by God be so perfect as to be obligatory to all nations, iii. 180.
Heir reputed, the absurdity of the notion. i. 370, 373, 375, 378, 382, 391, 407.
Next in blood, i. 400, 401, 449, 450. ii. 49, 50, 86. iii. 254.
Annexed to one single person, ii. 10.
All children of Noah were his heirs, ii. 10.
Next to the crown set aside, ii. 49, 51, 52. iii. 110, 111, 113.
Bellaie's extravagant doctrine of an heir apparent, iii. 119.
Enjoys the same rights as the parent, and devolves the same to his posterity, iii. 263.
Hengist and the Horsa, on what terms the county of Kent was given them, iii. 235.
Henry IV. of France, how he desired to recommend himself to his people, iii. 119.
I. of England, whether he was an usurper or not, iii. 243.
V. of England, his care was to please his people, and to raise their spirits, iii. 378.
Was terrible to France, ii. 361.
His character, iii. 377, 378, 380.
VI. became a prey to a furious French woman, iii. 245.
VII. had neither cross nor pile for his title, iii. 245, &c.
VIII. acknowledged the power of the Parliament in making, changing, and repealing laws, iii. 67, 198.
Heptarchy, when England was divided into seven kingdoms, each kept still the same usage within itself, iii. 211—213.
Hercules, an account of him, ii. 135.
Hereditary right, cannot naturally be in any, i. 397—450.
Prerogative of dominion, how understood, i. 430.
Right as a reward of virtue, ii. 24.
How a kingdom comes to be so, ii. 44, 45.
Crowns so, as to their ordina-

ry course, but the power restrained, ii. 141.
Monarchies, in them no care is taken of him that is to command, ii. 220.
According to proximity of blood, not prescribed by any laws of God, ii. 259.
Children seldom prove like their parents, ii. 298.
Crowns, five different ways of disposing them, iii. 99.
Heroum regna, i. 377, 444. ii. 400
The government of whom, ii. 383, &c.
History Roman, Tacitus says it wanted men to write theirs, ii. 322.
Hobbs, scurrilously derides Plato, Aristotle and Cicero, i. 382.
His *Bellum Omnium contra omnes*, i. 394, 405. iii. 125.
His Hostis & Latro, ii. 234.
The first that contrived a compendious way of justifying kings in the most abominable perjuries, iii. 85.
Holland, of great strength after the recovery of their liberty from the Spanish yoke, ii. 99.
The war with them in 1665, ii. 335, 336.
How they defended themselves from the greatest monarchies, iii. 17.
The States General, were called *high and mighty lords*; and the word *Heer* which signifies lord, was as common as *Monsieur* in France, &c. iii. 230.
The condition of the seventeen provinces of the Netherlands, when they fell to the house of Austria, iii. 270.
The power of the States General, how limited, iii. 339.
Honours, the highest falsely attributed to ill men, i. 414.
Given to ill-gotten wealth, i. 439. ii. 104, 137, 293, 295, 296.
To suffering virtue sometimes, ii. 161.
Where they have been the rewards of vice, ii. 171.
To those who have deserved the commonwealth, ii. 182, 189.
Justly bestowed on those that rightly perform their duty, ii. 239.
From whom purchased, ii. 294.
Given for services done to the public, ii. 386.
Princes could not without breach of trust confer them upon those that did not deserve them, iii. 217.
Hooker, his mistake in the fundaments of liberty, i. 330.
His admirable saying about lawful powers, ii. 40.
Slighted by Filmer, i. 330. ii. 54.
Hottoman, his character and account of the French kings, ii. 360.
Human nature, the miserable state of it, if not improved by art and discipline, ii. 463.
Frailty, allowance must be made for it, iii. 154.
Hurt, they do none who do nothing, where this rule is false, ii. 270.

J

James I, (king) his saying

about making judges and bishops, ii. 312.
Acknowledged himself the servant of the commonwealth, ii. 365.
Said he was sworn to maintain the laws, and should be perjured if he broke them, ii. 64, 65. iii. 374.
James II. what was to be expected from him, iii. 354.
Japhet, this part of the world seems to have been given to his sons, iii. 103.
Jealousy of state, ii. 265, 282, 383.
Jesuits, joined to Geneva, i. 316.
To be believed with caution, i. 446.
The Emperor of Germany (at that time) too much governed by them, iii. 306.
The soul that gives life to the whole body of the Popish faction, iii. 354.
The Order banished out of France by an arret of the Parliament of Paris, but refused to those of Tholouse and Bourdeaux, iii. 374.
Jews had a great veneration for the house of David, and why, ii. 56.
Grew weary of God's government, ii. 78, 454.
Had leave to destroy their enemies, ii. 90.
Idolaters among them in David and Hezekiah's days, ii. 171.
Idolatry, the production of the government, they had set up, ii. 252, 253, 354.
Submitted to Roman power, ii. 467.
Thought Christ's first work would be to throw off the Roman yoke, ii. 469.
Being converted, thought themselves freed from the obligation of human laws, iii. 30.
Some pretend to know their original, iii. 130.
A proclamation to extirpate them, iii. 233.
Imperator, a name given by the Roman armies to prætors and consuls, iii. 260.
Imperium summum summo modo non summe liberrimum, ii. 48, 236. iii. 254.
Ab eo à quo spiritus, iii. 263.
Imposing on people's consciences, ii. 207.
On some princes how easy it is, ii. 294.
Incolæ, who they are at Venice, ii. 139.
Distinction between them here and *cives*, iii. 300, 301.
Indemnity, the assurance of it would turn men's other vices into madness, ii. 390.
Industry, what is a spur to it, ii. 321.
Infancy, vide child.
Inheritance, the common divisions of it amongst brothers, ii. 11.
Where it gave no right to crowns, ii. 46.
To one family, ii. 49, 54.
Of the sword left to families, ii. 91.
What the apostles left to their successors in relation to the supreme power on earth, ii. 247.
Private, many controversies arise upon them, ii. 260.
What right is equally inherit-

ed by all children on the death of their parents, ii. 381.
William I. did not leave the kingdom, as such, at his death, iii. 30.
What belongs to females, iii. 104.
Little regard to it in the Austrian house according to blood, iii. 117.
In some places the law gives private inheritance to the next heir, in others makes proportion and allotments, iii. 120.
Injuries, the ways to prevent or punish them, either judicial or extrajudicial, ii. 231, 232.
Great ones will one time or other fall on those that do them, ii. 367, 368.
The Italians say, he that does no injury never pardons, ii. 406.
Those that are extreme, when so to be understood, iii. 67.
Injustice, what is so in the beginning, can never be the effect of justice, iii. 161.
Inquisition of Spain and other countries, iii. 33, 355.
Instinct, what, ii. 72.
Institution, he that institutes may also abrogate, i. 334, 420. iii. 67, 68.
Is an election, ii. 37.
Of a kingdom is the act of a free nation, ii. 363, 450.
No prince had a more solemn one than Saul, ii. 414, 415.
Some kings have by it but little power, ii. 476.
The magistrate's perogatives depend upon it, iii. 38.
Of power, is coercive, iii. 44.
When princes deflect from the end of theirs, iii. 60.
Wherein the end of it chiefly consists, iii. 146.
After the corruption of the state is taken for it, iii. 174.
They who institute magistracy, best know whether the end of the institution be rightly pursued or not, iii. 254.
Integrity of manners makes laws as it were useless, ii. 169.
Never subservient to the lust of princes, ii. 172.
Makes men contented with a due liberty, ii. 186.
Preserves popular equality, ii. 350.
Cannot be found in absolute governments, ii. 297.
Preserves the popular safety, ii. 250.
Interest, what advantages are reaped from that of uniting the nation's to that of the government, ii. 324.
Personal, preferred to the public good, ii. 250.
Interregnum, that there can be none, a fundamental maxim of great monarchies, ii. 253, 354.
John's (king) grants to the Pope declared by the Parliament unjust, illegal, &c. ii. 28.
Josephus, of the Jewish government, ii. 64.
On what account he calls it a theocracy and an aristocracy, ii. 70. iii. 370.
Says, their princes were to do nothing without the advice of the Sanhedrim, or to be exposed if they did, ii. 353.
Joshua, had neither the name nor power of a king, ii. 66, 402.

Isaac, his character, i. 341.
Israelites, had no kings in the first institution of their government, i. 378.
Nor till four hundred years after, iii. 170.
Strangers only excluded from being kings, ii. 39.
Their government aristocratical, ii. 63.
What the effect of their having kings, i. 450. ii. 366.
After Solomon, perpetually vexed with civil seditions and conspiracies, &c. ii. 251.
Asked for a tyrant (though not by that name) when they asked for a king after the manner of other nations, ii. 454.
Not known certainly by what law they were governed, iii. 170.
Lived under the power of tyrants, whose proclamations were laws, iii. 356.
Italy, when she lay desolate, ii. 193, 105, 254, 255.
How her commonwealths have flourished and decayed, ii. 129, 130, 131, 220, 222, 223, 255, 302, 304, 305.
Charles the VIII. of France conquered the best part of it without breaking a lance, ii. 194, 233, 415.
Judge, when every man is to be his own, ii. 19. iii. 64, 304, 329.
Who shall be between prince and people, ii. 241, 243. iii. 60, 61, 122, 176.
No prince fit to be judge of his own facts, iii. 60, 61, 141, 428, 333, 334.
The power of judging when it is fit to call the senate or people together, to whom and by whom referred, iii. 231, 296.
The Parliament the best judge in dubious cases, iii. 302, 306, 333.
Where it is not fit to be a judge in his own case, iii. 331.
Judges (such as Joshua, Gideon, &c.) whether their power was regal and just or not, i. 361, 362. ii. 394.
Whether there be any concerning kings' titles, ii. 261, 262.
The power of making them, ii. 312.
Sometimes the courts are filled with ill ones, ii. 317, 318. iii. 187.
Appointed to decide the contests arising from the breach of contracts, ii. 392.
Their opinion concerning ship money, ii. 446. iii. 342.
The religion of their oath, iii. 57, 68, 152, 187, 189, 190.
Parliament owned by kings to be judges of their stipulations, iii. 90.
What they ought to be, and in what sense chosen by the king, iii. 152.
Who were executed as traitors for subverting the laws of the land, iii. 152, 188, 342.
What act Edward III. promoted for his judges to do justice, iii. 155.
The general rule they are sworn to observe, iii. 156, 186, 342.
The power by which they act is from the law, iii. 184, 185, 186.

When they become the ministers of the devil, iii. 194.
The sad consequence of having all kings constituted judges over the body of the people, iii. 303, 304, 306, 329.
To determine controversies in a matter of right, iii. 331.
Whose commands they are bound to obey, iii. 342.
Judgment perverted, the ill effects of it, i. 324.
Future, not sufficient to restrain men from being vicious, iii. 13.
Here (in England) they are passed by equals, iii. 187.
Those the kings of Judah gave were in and with the Sanhedrim, iii. 187.
None that is right can be given of human things, without a particular regard to the time wherein they passed, iii. 290.
Kings can give none upon any of their subjects, and why, iii. 337, 340, 342.
Human, is subject to error, iii. 376.
Juries, Grand and Petit, their power, iii. 152, 187.
How the judges are assistants to them, iii. 188.
In whose sight they give their verdict, iii. 343.
Justice, has always truth for its rule, i. 374, 449.
What the proper act of it, i. 436.
Of every government depends on an original grant, ii. 23.
Has sometimes been perverted by the deceit of ill men, ii. 161. iii. 144.
The sword of it, for what use, and that of war, ii. 231.
Where it will be exposed to sale, ii. 295.
The rule of civil and moral actions, ii. 311.
How well administered in republics, iii. 17.
What is meant by it, iii. 33.
The distribution of it justly, is a work above the strength of one man, iii. 54.
When the course of it is certainly interrupted, iii. 128.
Deviations from it, iii. 154.
When it is best administered, ii. 176.
Overthrown by the number of laws, iii. 184.
In receiving it the king is equal to another man, iii. 185, 186.
Magistrates made to see it well executed, iii. 188, 189.

K

Katherine de Medicis, said never to have done any good but by mistake, ii. 164.
Kingcraft, what, ii. 341, 353, 354.
Was wholly exerted in the subversion of the laws of France, and the nobility that supported them, ii. 377.
Kingdom, the patriarchs had a spiritual one, i. 340, 341.
No paternal one among the Hebrews, i. 360.
Thought never to be bought at too dear a rate, i. 377.
How the first kingdoms were set up, i. 391.
What are lawful ones, i. 430.
What it imports, ii. 44.
One possessed by nine several families within two hundred years, ii. 90.

All have thoir various fluctuations through ill discipline or misconduct, ii. 93, 215.
The greatest have been destroyed by commonwealths, ii. 220.
Disputes about them most difficult and dangerous, and very bloody in several instances, ii. 261, 267, 268, 270
Of France divided by the estates of the realm, ii. 364.
Not established but for the good of the people, ii. 375.
Of Grenada, their usage of their princes, ii. 376.
All erected at first by the consent of nations, ii. 383.
Frequently reduced to their first principles, ii. 383, 384.
Some elective, some hereditary, and how directed, iii. 253, 254.
Constituted by conquering armies, and those established in the most orderly manner, iii. 257.
Kings and States, how they came to be erected, iii. 267.
The prerogative or royal charter granted to them, i. 311, 442.
The end of their institution, i. 317, 318, 334, 383, 386. ii. 48, 316. iii. 192, 332, 333.
Whether they may be restrained or censured, i. 318, 335, 390, 427. ii. 140, 235, 241, 243, 352, 369, 375, 423. iii. 44, 254, 262, 298, 325, 326.
In what sense they are like other men, i. 323, 408. ii. 77.
Evil ones will have evil ministers, i. 324. ii. 176.
The relation between them and the people, i. 331.
The only sort mentioned in scripture with approbation, i. 333. ii. 66, 448. iii. 146.
The first a cruel tyrant, i. 344.
Who taken out of the lowest family of the youngest tribe, i. 362.
All not the natural fathers of their people, i. 367.
Whom the ancients chose for theirs, i. 378, 379, 449. ii. 66.
Not all of them wise, i. 408. ii. 338. iii. 303.
A king by nature, who, i. 431, 438, 442. ii. 79, 90. iii. 22, 161, 262.
No design to speak irreverendly of them, ii. 32, 177.
Set up by the nobles, ancients and people, ii. 34, 38, 42, 46, 53, 123, 361, 368. iii. 74, 109, 110.
All not alike in power, nor spirit and principle, ii. 45. iii. 65.
Some good and some bad, iii. 306, 307, 352.
Whether any are immediately so on the death of the predecessor, and before they are proclaimed, ii. 55, 56, 260.
Given in wrath, ii. 64.
Four hundred twenty six thousand seven hundred kings, ii. 72, 73.
Many great ones overthrown by small republics, ii. 82.
Few possess the qualities requisite, ii. 87, 296, 351, 372.
The name thereof abolished, ii. 140. iii. 38, 39.
Regis ad exemplum, not always so in all, ii. 171.
A virtuous one, but a momentary help sometimes, when

his virtues die with him, ii. 193, 272, 297.
Whether those may be thrown down that sat themselves up, ii. 243.
The slothful and negligent accounted great evils, ii. 271, 272, 276, 285, 318, 319, 322.
Kings, the best of them liable to be corrupted, and subject to mistakes and passions, ii. 79. iii. 139, 329.
Who said to be like a Phœnix, ii. 297.
None so vicious but will sometimes favour justice, ii. 308.
Apt to live under the power of their lusts, ii. 312.
Wherein just ones will find their honour and security, ii. 318.
Where lawful ones have proved equal to the worst usurpers, ii. 310.
Whose condition most miserable, and why, ii. 310.
Some have experience as men, but not otherwise, ii. 340.
The name cannot make a king unless he be one, ii. 341. iii. 274.
Have a power of granting honours, immunities, &c. out of the public stock, ii. 350, 379. iii. 217, 299.
None to have more power or abilities to perform his office than Moses, ii. 353.
Advanced by abjuring their religion, ii. 362.
Under the happy inability to do any thing against the laws of their country, ii. 363, 365, 394. iii. 51, 118, 151, 323.
Where they have their share (and the senate theirs) of the supreme authority, the government is best supported, ii. 365.
Have found out easier ways of doing what they please, ii. 377.
How there would be as many kings in the world as men, ii. 381.
If they have no title they must be made so either by force or consent, ii. 383.
The consequence of their being unaccountable, ii. 390, 391.
Have no other just power than what the laws give, ii. 395. iii. 450.
The safety of their kingdoms, their chiefest law, ii. 397.
The first were of the accursed race, while the holy seed had none, ii. 403.
By what wicked means many of them have come in, ii. 406.
Of Israel and Judah under a law not safely to be transgressed, ii. 421.
Why those of Israel committed many extravagances, ii. 422.
Judged by the great Sanhedrim, ii. 423.
This sort of government the people's creature, ii. 429, 447, 264. iii. 325, 357, 360.
Not to claim the liberty of doing injustice in virtue of their prerogative, ii. 431, 433.
Bound up to the laws as to matters of propriety, ii. 443.
Not to be too powerful nor too rich, ii. 450.
Of Israel, though they led vast armies into the field, seem

to have possessed but little, ii. 451.
What their government ought to be, ii. 457.
Of England, reign by law, and are under it, and why, ii. 468, 477. iii. 12, 13, 343.
What will endear them to their people, ii. 477.
The sovereign power often meant by this name, iii. 10,
What meant by lawful ones, iii. 15, 57, 58, 74.
Why those of Judah could make no laws, iii. 22.
May be feared by those that do ill, iii. 24.
How made in the Saxon times, iii. 27.
What those of the greatest nations have suffered, iii. 37.
What is that king which never dies, iii. 58, 223.
When said to become perjured, iii. 67.
Not masters but servants of the commonwealth, ii. 365, iii. 74.
Cannot be interpreters of their own oaths, iii. 83.
Compelled to perform the conditions of *Magna Charta*, iii. 89, 90, &c.
May resign, if they will not observe their oaths, iii. 96, 97.
Next in blood, cannot be said generally to be kings till they are crowned, iii. 99, 103.
How he is not to be heard, iii. 154.
The regal power, not the first in England, iii. 167.
Where the same power that had created this government may abolish it, iii. 171, 172.
What our ancestors did in relation to them, iii. 171.
Judges, rightly qualified, are to instruct them in matters of law, iii. 186.
Wherein they are equal to other men, iii. 187.
None as such have the power of judging any, iii. 187, 191, 192, 195, 339.
Where they cease to be so, and become tyrants, iii. 193.
Their power not restrained but created by *Magna Charta* and other laws, iii. 199.
What is natural for the worst of them to do, ii. 202.
The Norman had no more power than the Saxon, and why, iii. 215.
Tacitus says, they were taken out of the nobility, iii. 217.
Said to be chosen or made, and sometimes deposed by their great councils, iii. 232, 297.
Never masters of the soil of England, iii. 233, 266, 267.
Why they speak always in the plural number, iii. 238.
The titles of the English examined into, iii. 244, 245, 246.
Whom the Parliament have made are lawful, or there could have been none for seven hundred years, iii. 245, &c.
Their power of calling parliaments was given to them, iii. 248, 249, 295.
Naturally delight in power, and hate what crosses their wills, iii. 255, 365.
The most absolute princes in the world never had this name, iii. 259.

Some subject to a foreign power, some tributary, and the Romans had many depending upon them, iii. 261. 262.
The acts of one *de facto* considered, iii. 274, 276.
Wherein the essence of a king consists, iii. 274.
Deterred from endeavouring to seduce any of their great men from their duty, iii. 291.
Who are a great calamity to a nation, iii. 296, 380.
Who only are the heads of the people, iii. 307, 313, 314, 318.
If their actions be examined and their persons punished, iii. 325, 326.
None less capable in aftertimes of forming a right judgment than they, iii. 339.
Nor can be present in all their courts, iii. 329.
Do not stipulate for themselves but their people, iii. 340.
In what cases they are perpetually minors, iii. 342.
Their power not universal, for many things they cannot do, iii. 343, 344.
May in some degree mitigate the vindictive power of the law, iii. 346.
The advantage of their being restrained, iii. 351.
Not created to make laws, but to govern by them; and what is signified by *le roy le veut*, iii. 373, 374, 375, &c.
Are sworn to pass such laws as the people chuse, iii. 375, 379.
King's Bench, for what end established, iii. 192.
The king that renders justice is always there, iii. 341.
Knights' service, what, iii. 222.
Knighthood, the dignity of it, and what, iii. 222, 223.
Knights of shires in the Saxon times, iii. 225.

L

Laws, the prevalency of them over sovereign commands, i. 310.
Who best obeys them, i. 328.
The end of them is to enjoy our liberties, i. 328, 329, iii. 9, 170.
Invest magistrates with power for the public good, i. 386. ii. 9.
Acknowledged one only heir, i. 397. ii. 10.
Said to be written reason, iii. 68.
Have in them a constraining force, ii. 40, 41.
To whom the power of making them belongs, ii. 40, 42. iii. 53.
Are the measures of power, i. 43, 44, 48, 52. ii. 350, 351, 378, iii. 342, 343, 344.
Of each country create a right to the person that governs, ii. 47, 48, &c.
Prescribe rules how power should be transmitted, ii. 48, 49.
Where good ones do no good, ii. 83, 406.
To be suited to present exigences, i. 434. ii. 151.
Make no distinction of persons, ii. 161.
Lex Perdueleionis, ii. 166.
Rendered useless by integrity of manners, ii. 172.
Abhorers of the dominion of it, ii. 181, 182.
Instituted for the preventing of evil, ii. 231, 243, 364. iii. 98.
Those that go beyond them

act therein as private persons, ii. 236.
Who most restrained by them, ii. 239.
Subsist by executing justice, ii. 244, 315.
Concerning the succession, ii. 259. iii. 51, 52.
Tricks at law to put men to death, ii. 265, 266. iii. 205.
When in force men of wisdom and valour are never wanting, ii. 282.
When they were overthrown, ii. 307.
The despisers, destroyed without law, ii. 356.
Do not always go by plurality of voices, ii. 367.
Of every place, shew the power of each magistrate, 372.
Where before kings, ii. 314.
Proofs hereof, ii. 315.
Of God, not to be abrogated by man, ii. 424.
Our kings can make none of themselves, ii. 474. iii. 255.
We know none but those of God and ourselves, iii. 8.
Are not made in vain, iii. 13.
Some neither just nor commendable, instances thereof, iii. 33, 34, 183.
The directive power, which is certain, has a power over the conscience, iii. 33.
The sanction that deserves the name of a law, iii. 34, 53, 144, 175, 182, 183.
To what end made as to magistrates, iii. 45, 46.
Princes and nations both gainers by the due observance of them, iii. 50, 57, 96, 97, 322, 323, &c.
That is not a state or government which has them not, iii. 52.
Athenians not without them when they had kings, iii. 53.
How said to be above the king, iii. 57, 58.
Can only be altered in parliament, iii. 67, 68, 86.
For what reason established an encomium, iii. 69, 70.
Who violate those of nature in the highest degree, iii. 78.
Of one's country, to be submitted to, iii. 101.
Of nature, eternal, iii. 101, 112.
By whom the rigour of it is to be tempered, iii. 153, 154.
None made by man can be perfect, iii. 159, 182, 185, 186, 200.
By them kings first became what they were, iii. 171.
Those good for one people that are not so for all, iii. 178, 179.
The statute of Henry VII. concerning a king *de facto*, for what end made, iii. 274, 277.
Plain ones have been industriously rendered perplexed, iii. 294.
Good ones prescribe safe remedies against the mischiefs of ill magistrates, iii. 294, 296, &c.
Where they are merciful to ill and good men, iii. 322.
Should aim at perpetuity, iii. 348.
The mischiefs effected by a person's word having the force of a law, iii. 351.
When they may be easily overthrown, it will be attempted, iii. 369.
What gives the power of law

to the sanctions under which we live, iii. 372.
Leagues, do not imply absolute epuality between parties, ii. 55.
With conquered nations, ii. 118.
League-factions and wars of the Hugonots, ii. 150, 151.
How faithfully they have been observed, ii. 211.
Men cannot much rely on them, ii. 211, 212, 214, &c.
Those that make such as are detrimental to the public are punishable, ii. 239.
Made against the Hollanders, iii. 17.
Of Joshua with the Gibeonites, gained by deceit, iii. 92.
Made on a national not personal account, iii. 339, 340.
Learning makes men excel in virtue, ii. 95.
Said to make men seditious, but disproved, i. 407. ii. 157.
Legislative Power, of Rome and Sparta continued in the people, ii. 112. 123. iii. 25.
When it came to be scorned, ii. 411, 412.
The magisterial power receives its being and measure from hence, iii. 44.
Cannot be conferred by the writ of summons, but must be essentially and radically in the people, iii. 372.
Is always arbitrary, iii. 367.
Only trusted in the hands of those who are bound to obey the laws that are made, iii. 371.
The king cannot have it in himself, nor any other part of it than what is formal, iii. 376, 381.
Legislators should always be of the wisest men, ii. 43.
Wherein their wisdom consists, ii. 152.
Wherein they shew themselves wise and good, iii. 368.
Legitimacy, contracted, ii. 51 52. vide bastardy.
Some children, though born in wedlock, utterly rejected as being begotten in adultery, iii. 121.
Lewis XI, his following the laws of his country, ii. 358.
XIV. accounted his not being able to act contrary to law, a happy impotence, iii. 118.
Liberty, the notions therefore, and from whence, i. 315, 316, 318, &c.
Natural, the consequence of it removed, i. 318.
Wherein it solely consists, i. 327, iii. 72.
Filmer's notion of the greatest liberty in the world, i. 327.
Oppugners of public liberty, i. 327.
Universal, asserted, and what that is, i. 341, 357, 397. ii. 18.
The assertors thereof have God for their patron, i. 430. ii. 179.
Produces virtue, order and stability, ii. 82, 158.
The loss of it in the Roman Empire, ii. 91, 92, 98, 99, 121, 130, 165. iii. 166.
The mother and nurse of virtues, ii. 91, 98, 130, 200, 292, 307, 325.
Made the most virtuous people in the world, ii. 130.

When subverted, the worst men thrive best, ii. 162, 163, 165.
How our natural love to it is tempered, ii. 179, 180, 182.
None sought it but with some restraint, ii. 186.
What the love of it inspires, ii. 165, 199.
At home, and war abroad, ii. 202.
When this is lost, kingdoms and states come to nothing, ii. 99, 130, 131, 220.
Patricians the best defenders of it, ii. 227.
The way to recover it, ii. 247.
Cannot be preserved, if the manners of the people are corrupted, ii. 290.
None remained in Rome, when Sylla resigned his power, ii. 307.
When lost, excellent spirits failed, ii. 323, 324, 326.
A people can desire nothing besides it, ii. 348.
Cannot subsist if vice and corruption prevail, ii. 377.
Is a right common to all, ii. 379, 381.
God gave the Israelites this law, ii. 427.
Who have no true sense of it, ii. 437.
Our ancestors left us the best laws they could to defend it, i. 453.
All by the law of nature have a right to their liberties, lands, goods, &c. iii. 78, 354.
When principles make men lovers of it, iii. 124.
None can subsist where there is an absolute power above the law, iii. 137, 138,
Where it is destroyed by the prerogative, iii. 143.
Of a people, naturally inherent in themselves, iii. 170, 236, 264.
The value our ancestors set on them, iii. 184, 268, 364.
None has better defended them than England, iii. 196, 364.
To it Tacitus attributes the German bravery, iii. 210.
What is the utmost act of it, iii. 214.
The exercise of the natural liberty of nations in the several imitations of the sovereign power, iii. 254.
Of a people, the gift of God and nature, iii. 263.
Forfeited or resigned, iii. 265.
No veneration paid to magistrates can lessen the liberty of a nation, iii. 269.
Nothing valuable compared to it in the opinion of the Romans, iii. 280.
Easy to get partizans to make good by force the greatest violations of it, iii. 301.
How to use one's own relation to the public, iii. 329, 330.
Liberty with a mischief, iii. 356, 358, 359.
Of those who act in their own persons, and of those who sent delegates, is perfectly of the same, iii. 361.
That for which we contend is the gift of God and nature, remains equally in all, iii. 362.
Lineal subjection never learned from Moses, i. 445.
Succession, where not followed, ii. 50, 51.
London, the privilege of the common-hall, 300.
Lord Paramount, over whom, i. 338, 339, 241, 344.

From whence he must come, i. 356, 357.
None by nature over his brethren, ii. 11.
The mischiefs that both do and suffer are very great, ii. 376.
Lords, how they lost the authority which they had formerly, iii. 292, 293.
Lord's Day, not to be spent in sports and revellings, iii. 133.
Love to one's country, commonwealths have it most, ii. 192, 199, 200, 296.
The happy effects of it, ii. 197, 198.
A resolution to die for, or live with it, ii. 197, 212, 213.
The way to make people in love with it, ii. 213, 275, 326.
This now turned into a case of private interest, ii. 225.
The behaviour of those that are lovers, &c. ii. 275, 323, 324.
Occasions sometimes wars and tumults, ii. 302.
Loyalty, those that boast loudest of it, must apply it the wrong way, ii. 378.
Lucullus, his little army put Tigranes with 200,000 men to flight, ii. 99.
Luxury, of the Romans, the occasion of their ruin, ii. 136.
Brought into Rome by C. Manlius, ii. 170.
Exposes the virtuous to scorn, ii. 292.
When in fashion the desire of riches must increase, ii. 294, 295.
The bravest nations most enslaved by it, ii. 453.
Lycurgus, his laws, their authority from the general assembly, iii. 25, 52.
Absurd to think of restoring his laws, iii. 178.
To what the long continuance of them is attributed, ii. 287.

M

Macedonian kings, their power was but small, ii. 98.
Their army overthrown by Paulus Emilus, ii. 216, vide monarchy.
Machiavel, his admirable saying, ii. 83, 343, 344.
Magi, who usurped the dominion of Persia after the death of Cambyses, ii. 234.
Magistracy, can have no interest distinct from the public, i. 432, 433. ii. 172.
Its office is to execute the law, i. 432. ii. 146, 232.
If the people be base, &c. it cannot be supported, be the ruler ever so perfect, ii. 180, 181.
Whether it be that power which above all restrains liberty, ii. 256.
Strangers admitted into that of Rome, ii. 203.
The effect of regal power committed to an annual, or other sort of chosen magistrate, ii 216, 321.
None can have the right of it who is not a magistrate, ii. 232, 233, &c.
Where it had nothing to do in spiritual things, iii. 473.
The ordinance both of God and man, iii. 21, 22, 38, 40, 44.
Circumscribed by such rules

as cannot be safely transgressed, iii. 62. 320, 321.
Where obedience is due, iii. 34, 35, 36, 37, 38.
On what the right and power of it depends, iii. 38.
The nature of it, iii. 269, 270.
None now in being which owes not its original to some judgment of the people, iii. 337.
Magistrates, by whom constituted, i. 319, 436, ii. 36, 390. iii. 139.
To what end set up, i. 382, 383, 384, 419.
Ministers of God, i. 419, 420. ii. 467.
How they are helpful to nations, i. 438. ii. 66. iii. 296, 300.
Under several names and imitations, ii. 382, 391, 392.
Jewish, wherein like the dictators of Rome, ii. 69.
Punishable with death by the Roman law, ii. 167, 168, 236, 239.
Annual election of them, ii. 199.
Have enjoyed large powers, that never had the name of kings, ii. 240.
How to be restrained, ii. 243. iii. 45, 49, 323.
A particular character of good and evil ones, iii. 126, 127.
When they were temporary and occasional, iii. 171.
Walk in obscure and slippery places, iii. 323.
What to be done to those who despise the law, iii. 323.
Wherein their strength is, iii. 331.
The first may be virtuous, but their successors may soon be corrupted, iii. 368, 369.
Magna Charta, grounded on king Alfred's laws, i. 328.
The Jews had none such, ii. 466.
What it obliges the king to swear to, iii. 57.
Puts every thing on the laws of the land and customs of England, iii. 68.
Is only an abridgment, iii. 87, 233.
Not the original but a declaration of the English liberties, iii. 199, 367.
The rights the nations have resolved to mantain, iii. 199.
Male-line examined, i. 402. ii. 262. iii. 21.
Malice, is blind, ii. 169.
Seditions &c. arise from thence, ii. 226. 228.
Mamelukes, their great defeat near Tripoli by Selim, ii. 192.
Accounted themselves noble, though born slaves, ii. 171.
Man, naturally free, i. 314, 352. iii. 263.
Every one chief in his own family, i. 336, 349.
Cannot overthrow what God and nature have instituted, i. 346, 392.
Creates governments and magistrates, i. 353.
None knows originally from whom he is derived, i. 360, 366, 392. iii. 103.
Whence his misery proceeds, i. 437, 438.
Wants help in all things, i. 437, 438. iii. 349.
What makes a natural difference, i. 443.

All subject to error, ii. 116, 117, 258. iii. 50.
Enters into some kind of government by reason, ii. 182.
Follow what seems advantageous to them, ii. 327.
What every one ought to be, ii. 405.
None can serve two contrary interests, ii. 451.
Are all by nature equal, ii. 160.
Where every one is a magistrate, iii. 296.
Mannors, enjoyed by tenure from kings, iii. 257.
Marriages, often declared null, ii. 52.
Of Plebians and Patricians, ii. 101.
When proved of no force to legitimate children, iii. 121.
A power must be lodged somewhere to decide them, iii. 121.
Masters, how far their commands are binding, iii. 131, 132.
Only to decide contests between them and their servants, iii. 331.
Maxims, nothing to be received as a general one which is not generally true, iii. 77.
Mazarine, the ways of his advancement, ii. 299.
Medicis, of the title of that family to Tuscany, iii. 283.
Members of Parliament sent to serve for the whole nation, not for a particular borough, &c. iii. 359.
Instructions are often given to them, iii. 364.
Have no power before they are chosen, or ever could, if those that send them had it not in themselves, ii. 365.
Must take care that the commonwealth receives no detriment by their votes, iii. 366.
A few possibly may be corrupted, iii. 369.
Mercenary army, see soldiery.
Their business is to keep on their employment, ii. 196.
Soldiers always want fidelity or courage, ii. 214. iii. 333.
Courtiers will expose not only honours, but even justice to sale, ii. 295, &c.
Wretches, their power at court, ii. 299.
Augustus Cæsar had thirty legions of them to execute his commands, iii. 166.
Merit, men rarely make a right estimate of their own, ii. 259.
The way of advancement to honour, ii. 319.
What preserves, and what abolishes it, ii. 326.
Micklegemots, were general assemblies of the noble and free men, iii. 212, 225, 293.
They set up seven magistrates over the Heptarchy, iii. 214.
Of what they were in the beginning of the Saxon reign, iii. 294.
Miltiades, his desire to wear an olive garland for his victory at Marathon, and the answer given to him, iii. 385.
Ministers, according to the temper and genius of the prince, i. 323, 324.
Of the Devil, who, i. 396, 422, 429. iii. 20, 34, 36, &c.
Of God, who, i. 421, 422, 424. ii. 146, 200. iii. 20, 34, 36.
Must receive their dignity from a title not common to all, iii. 26.
Every man by his works will

declare whose minister he is, iii. 33.
The Devil's of a lower order, iii. 131.
Of God, how they may become the worst of men, iii. 149, 150.
What sort have seldom escaped punishment, iii. 156.
Of the Devil, have always carried on their designs by fraud, iii. 308.
Mistakes, in punishment, carefully repaired by honors, ii. 116.
Seditions, tumults and wars arise from thence ii. 226.
None in Sparta after Lycurgus' laws were established, ii. 227, &c.
That some have fallen into by the form of *writs* summoning persons to appear before the king, rectified, iii. 337.
Mithridates, what reckoned the greatest danger of war with him, ii. 98.
Monarchs, who have their right from God and nature, i. 327.
Ought to consult the public good, i. 386, 387.
How most came to their dignities, ii. 144.
Are not above the law, iii. 76.
Monarchy, paternal, over whom exercised, i. 346.
Whence so called, i. 352.
For whom best, i. 434.
No natural propensity in men and beasts to it, i. 59, 60.
How Aristotle commends it, ii. 79, 80.
Mixed, regulated by law, ii. 86, 93, 172, 187.
Of Rome, at first not absolute, ii. 123.
Most have suffered from greater changes than Rome, ii. 127.
Macedonian fell all to pieces after the death of Alexander, ii. 147, 253.
In what sense said to be natural, ii. 178.
A peaceable one in Peru for twelve generations, ii. 257.
The French monarchy has been full of blood and slaughter, ii. 191, 375, &c.
The most gentle one heavier than any commonwealth, ii. 282.
All subject to civil wars, ii. 282.
Well regulated when its powers are limited by law, ii. 349.
The justice of them established by common consent, ii. 35, 37, 53, 54, 190, 234, 351.
Why so called, ii. 144, 157, 471.
Nothing in the nature and institution of it that obliges nations to bear with exorbitances, ii. 406, 407.
What sort was pleasing to Samuel, and a rejection of God, ii. 426.
Paternal overthrown by Filmer, ii. 447.
Not universally evil, ii. 455.
Where it is regular, kings can neither make nor change laws, iii. 57.
None established in England in the time of Julius Cæsar, iii. 178.
Mixed monarchy, what the best way to support it, iii. 290.
What has given beginning, growth, and continuance to all the mixed ones in the world, iii. 352.

That not free which is regulated by a law not to be broken without the guilt of Perjury, iii. 373.
When the mixed monarchies began to be terribly shaken, iii. 377.
Money, Charles VII. of France, raised by his own authority, iii. 377.
Moses and Aaron, the first rulers of the people, neither of the eldest tribe or eldest line, i. 360, 361.
His admirable gifts, i. 365. ii. 84, 437, 438.
Had not the name or power of a king, i. 452. ii. 66, &c.
Gave the people leave to chuse their own magistrates, ii. 152.
Divided the Hebrews under several captains, ii. 206.
Power insupportable to him, iii. 135, &c.
The character, ii. 353. iii. 59, 313.
Whether we ought to conform to his law, iii. 181, 182, 183.
Multitude, what right it has to change a tyrannical government. i. 333.
Composed of free men; the power that is placed in them, iii. 79.
None can be seditious till a commonwealth be established, ii. 30.
Those that enter into contracts act according to their own will, ii. 31.
Where it brings confusion, ii. 214.
Is the glory and strength of every prince, ii. 314, &c.
May have its fears as well as tyrants, ii. 347, &c.
Confers on the prince all the power he has, ii. 381.
What is natural thereto in relation to government, ii. 389.
Murderers, wilful, the horns of the altar give no protection to such, iii. 23, 24.
Mysteries, of state, i. 321.

N

Names, are not essential to magistrates, iii. 260, 262.
Of sovereign lord, &c. consistent with liberty, iii. 269, 270.
Nothing of majesty among the Romans and Grecians to a single person, iii. 269, 270.
There must be some used in all public transactions, iii. 340.
Not to be regarded so much as the power, iii. 363.
Nations, what their rights are, i. 319, 320. ii. 32, 89, 99, 136, 139, 144, 197, 225, 300, 320.
That went from Babylon, how many, i. 344, 349, 356, 357, 372, 391. ii. 19, 380.
Natural for them to chuse governors, i. 428, 450, 454. ii. 190. iii. 44, 148.
Northern, their governments how instituted, ii. 28, 365. iii. 224.
Free, never conquered but with difficulty, ii. 98, 99.
Oppressed, can never grow wanton, ii. 119.
None safe without valour and strength, ii. 125. iii. 204.
Foreign, called in by some princes to destroy their own people, ii. 310.
Some see their children, ii. 215.
Slight matters sometimes

bring them into confusion, instances thereof, ii. 251, 252.
When they are most unquiet, ii. 271, 272, 327.
The wisest have set bounds to their princes' power, &c. ii. 375, 391, 449, 450.
Their liberties from God and nature, ii 379, 407.
Where they have taken the most extreme courses, ii. 391.
Owe nothing to kings till they are kings, ii. 433. iii. 107, 108.
What set limits to their patience, ii. 438, 440.
What inclines them to set up governments, ii. 439.
When all were governed by tyrants, ii. 462.
Their safety ought not to depend on the will of their princes, iii. 70.
What are free, and what not, iii. 141, 142.
Those that had no kings had power, iii. 167, 168.
What shews best their wisdom and virtue, or their vices and folly, iii. 179, 180.
Wherein their failure has been too frequent, iii. 187.
England divided into seven kingdoms, iii. 215.
None can have a power over any, otherwise than *de jure* or *de facto*, iii. 255.
Obedience due from the whole body, what, iii. 279.
Their liberties do not rise from the grants of princes, iii. 284.
Delight in the peace and justice of a good government, iii. 285.
What the most ready way to effect their ruin, iii. 293, 334, 335, 348.
When obliged to remove the evils they lie under, iii. 325, 326.
None can have an equal within itself, iii. 331.
One that is powerful cannot recede from its own right, iii. 331.
None ever wants a king that has a sovereign power within itself, iii. 342.
What those ought to do that are so happy as to have good kings, iii. 350.
Great ones never ordained by God to be slaves, iii. 362.
Naturalization, Rome was for a general one, iii. 263.
Negative voice, how far it is said to extend, iii. 202.
Le roy s'avisera, what meant by it, iii. 273.
Nero, the power of the state over him, i. 334, 335, ii. 476.
His endeavour to make a woman of a man, i. 409—425.
To tear up virtue by the roots, i. 426. ii. 164, 314.
Condemned to be put to death, ii. 167. iii. 37.
What sort of vermin he encouraged, ii. 172.
Set the city on fire, ii. 243, 309, iii. 32.
Died by the hands of a slave, ii. 254, 476.
His character, ii. 61.
His madness not to be cured but by his death, iii. 325.
Nimrod, the first king, i. 342, 343, 352. ii. 400.
Usurped the power over his father, &c. i. 344. ii. 407, 408.
Heir to no man as king, i. 372.

Slain by Ninus, i. 370.
No right can be derived from him, i. 293, 299, 407.
Erected his kingdom contrary to paternal right, ii. 380, iii. 169.
Noah, bore no image of a king, i. 342. iii. 169.
His dividing Europe, Asia, and Africa amongst his sons, i. 369.
When he went out of the ark, God gave him a law sufficient for the state of things at that time, ii. 401.
None but his right heir can have a title to an universal patriarchal right, iii. 15, 103.
Nobility of Rome extirpated, ii. 125.
The Roman power chiefly in them after the expulsion of the kings, ii. 145.
Hold the balance between the king and the commons; when and how weakened, ii. 159, 160, 165.
Of Arragon's saying to their new made king, ii. 369.
What our ancestors meant by them, iii. 216, 217.
The strength of the government when placed in them, iii. 217, 287.
Sometimes called infinite multitude, iii. 221, 222, 224, 226.
Knighthood always esteemed noble, iii. 221.
In France, &c. of what esteem, iii. 224.
The present titulary nobility has no affinity to the ancient nobility of England, iii. 226.
Of Venice and Switzerland, what makes them so, iii. 229, 230.
Their virtue and power formerly kept the kings within the limits of the law, iii. 291.
Many have lost their estates and interest, iii. 292.
Noli Prosequi, said to be annexed to the person of the king, iii. 280.
Norman kings, swore to govern by the same laws as the Saxons, iii. 215, 369.
Nations, (opinions) what are agreed to by all mankind, i. 388.

O

Oath of allegiance used in the kingdom of Arragon, ii. 25.
Agreements between princes and people always confirmed by them, ii. 241.
How kings may be absolved by them, iii. 85, 86.
Its force consists in the declared sense of those who give it, ii. 86. iii. 281, 282.
Scarcely any prince has broken it but to his own ruin, iii. 90.
All either voluntary or involuntary, iii. 90.
Ought to be preferred in reverence to the religion of it, iii. 91.
What to be done when the observance of it would be dangerous, iii. 98.
How the judges are bound by theirs, iii. 152, 153.
Whether that of the crown had not been kept, iii. 152, 156.
What kings are obliged to do by them, iii. 193.
How far those of allegiance bind private persons, iii. 285.
Obedience, active and passive, i. 325. ii. 135.
Where due and not due, i.

385, 425. ii. 22, 398, 407, 433. iii. 42, 43, 279.
How far a good man will pay it to his prince, ii. 290. 291.
The effects of its discipline amongst the Romans, ii. 324.
To higher powers, St. Paul's words favour all sorts of governments as well as monarchy, iii. 16, 17, 18—21, 22, 42, 43.
Why it should be paid, iii. 32.
Is not due to that which is not law, ii. 34, 35, 36, 131, 182.
The prince owes it to the laws as well as to the meanest subject, iii. 58.
Due to parents, from whence it arises, iii. 263.
Simple and unconditional, to what king we all owe it, iii. 342.
Object, the only worthy one of man's desire, i. 435.
Obligation, arising from benefits, can only be to those who confer them, i. 397.
Of gratitude, to whom due, ii. 408.
How far the extent of it can be known, ii. 433.
Henry VIII. owned that it rightly lay on him to use the power with which he was entrusted, iii. 68.
Occupation, the meaning of the word, ii. 236, 237.
Offa. Vide *Saxon*.
Officers, great ones in armies think only of enriching themselves, ii. 333.
How their authority and power is to be regulated, ii. 43, 44.
Ought to have their places for the people's good, iii. 196.
Frequently put to death by the Athenians, &c. iii. 302.
Offices, what fits men for the execution of them, i. 442, 443.
Those that by will make the most of them, iii. 357.
Or must be turned out as a scandal to the court, iii. 358.
By what means they have been often obtained, iii. 359. 360.
Oppression, sometimes makes nations outrageous, ii. 119.
Does people such injury as can never be pardoned, ii. 406.
Order, where inverted, introduces extreme confusion, i. 439.
Wherein it principally consists, i. 439, ii. 17, 20, 29, 83, 84.
The effect of it, ii. 85, 95.
Good, not wanting in Venice, ii. 99.
Not amongst the Romans, ii. 103.
Being established, makes good men, ii. 217.
The best sometimes subverted by malice and violence, ii. 114.
Ordinance, what is blasphemy to impute to God, i. 392.
Civil and human, ii. 31.
God's general, and the particular ordinance of all societies, ii. 231.
Of God, appointed for the distribution of justice, ii. 244, 245.
Several tending to the same end, iii. 21, 22.
Original, no man knows his own, i. 366, 378. ii. 388. iii. 103.
Contract, i. 436, 438, 439, 441, 444, 447. ii. 11, 20, 23, 32, 392, 434.
Right must be regulated according to it, ii. 334.

Where it would be of no value, ii. 391.
Of nations almost wholly unknown to us, ii. 400.
The British is deduced both from the Romans and the Saxons, iii. 206, 267.
Ostracism, of the Athenians, not accounted a punishment, ii. 153.
Nothing savoured so much of injustice, ii. 347.
Otho, had the Empire given him, by a pair of rascals, ii. 254.
Was a self murderer, ii. 254.
Why he was advanced, ii. 259.
Out-law, or lawless, often applied to the wicked, but never to the just, ii. 402.

P

Papal power, the foundation of it, i. 320.
The civil dissentions in Germany proceeded from thence, iii. 48.
Pretends to the power of absolution, iii. 85.
Her excommunications, *brata fulmina*, iii. 88.
Papists, their kindness to the Protestants, instanced in, iii. 354, 355.
Paradoxes, many of them true, i. 429.
Pardons, said to be only the bounty of the prerogative, ii. 97, 343.
The meaning of a general one at a coronation, iii. 158.
Where granted against the oath of the crown, iii. 158, 159.
Granted by act of parliament, iii. 158, 160.
None for a man condemned upon an appeal, iii. 343.
The king cannot always pardon in cases of treason, iii. 344.
Parents, how obliged by nature to seek their children's good, ii. 396, 404.
Parliaments, the institution of them, and for what, ii. 26, 27.
The settling and transferring of crowns lodged in them, ii. 35, 142, 387.
In France, their parliament was set up to receive appeals from other courts, and to judge sovereignly afterwards fell into little use, ii. 150, 363.
A free, well regulated one, to chuse ministers of state, ii. 188, 189.
Their great power in all the kingdoms that came from the north, ii. 357.
Declared Henry III. of France fallen from the crown, ii. 362.
How they may be made useless, ii. 451.
England was never without them, iii. 9, 10.
The word Parliament came from the French but the power was always in the English people, iii. 25.
Henry VIII. confessed them to be the law-makers, iii. 67, 198.
Doubtful cases referred to them, iii. 68, 156.
By writs compel the king to perform the conditions of the great charter, iii. 89, 90.
Have given the crown to whom they pleased, iii. 101, 111, 112, 114, 204, 220,

221, 222, 232, 246, 248, 250. 377
Ought of right to be annually, iii. 246, 302, 303.
From whence they derive their authority, iii. 206, 207, 248, 250, 295, 302, 303.
Have refused to be dissolved till their work was finished, iii. 300, 301.
Not impeccable or infallible, but less subject to error than some princes, iii. 303, 306, 348.
The lives and liberties of the people depend on this court, iii. 347.
What the great Burleigh and Sir Thomas More said of its power, iii. 364.
If they make unjust laws their posterity will suffer, iii. 370.
How difficult they are to be bribed, iii. 370.
To have their roles in their offices, not a mere ceremony, iii. 374.
What kings have had continual disputes with them, iii. 380.
Parties, what certainly divides the nation into them, iii. 129.
Threaten a national ruin, often, iii. 294.
Passions, every one has them, few know how to moderate them, iii. 343.
Puts princes upon the most unjust designs, iii. 337.
The law is without passion, iii. 69.
Patents, began long after the coming of the Normans, iii. 219.
Pater Patriæ, the title thereof considered, i. 367, 426, 427.
By killing a tyrant, how said to become so, i. 377, 378, 385, 419.
Paternal right, Abraham arrogated none to himself, i. 345, 346.
Impossible to be known, i. 356, 366, 373, 376, 450.
All the kingdoms of the earth established upon it, i. 373.
Government of Rome not paternal, i. 383.
Cannot be conferred on princes, i. 408, 409. ii. 39.
To whom it belongs, i. 369. ii. 9, 13.
In what the Hebrews had no regard to it, ii. 446.
Is a mere fiction, ii. 388.
Is from nature and incommunicable, ii. 395.
Patriarchal right, women and children have it according to Filmer, i. 312.
The absurdity of it, i. 336, 337, 338, 393, 394. iii. 15, 360, 361.
All pretence to it destroyed, i. 345, 353, 359, 369. iii. 207, 208.
Must accrue to every father, i. 350.
Either divisible or indivisible, i. 356, 374.
Patriarchal power, different from the regal, i. 340, 341, 429.
Peace, there can be none without justice, i. 335. ii. 128.
Desirable for a state constituted for it, ii. 125.
Slavish, ii. 126, 127.
What men have in their grave, ii. 127.
What the Spaniards settled in the West-Indies, ii. 127.

The name of it given to desolation, ii 127, 301, 302, 303, 306.
The melancholy ones which France enjoyed for five or six ages, ii. 372, 373, 374.
In Spain, to what imputed, ii. 305.
The terms offered, if good, like to be observed, if bad will soon be broken, ii. 219.
Peers, act for themselves in their own house, ii. 303, 304.
Pembroke, a late earl of that family, his base expression, ii. 264.
People, not originally created for kings to reign over them, i. 317.
Whether they chose governors, i. 333, 428, 435. ii. 24, 38, 52, 53.
Scripture history for the proof of it, ii. 65, 369.
The choice of the constitution is from them, ii. 40, 139, 140, 350. iii. 107, 169.
Kings receive their right from them, ii. 47, 387.
How God deals with a people when he intends to exalt them, ii. 102, 103.
Of Rome, their sad degeneracy, ii. 104, 105.
Their right to appeals, ii. 114, 123, 139 166.
When acting according to their own will seldom set up unworthy men, unless through mistake, ii. 181.
The body of them the public defence, ii. 196, 205, 206.
None ever well defended but those who fight for themselves, ii. 205, 206.
In civil contests they equally suffer, ii. 229, 230.
Whether to be judges in their own cases, ii. 241, 242.
When generally corrupted, the event is always the raising up of a tyrant, ii. 248, 386.
Their condition were tolerable under very cruel emperors, ii. 270.
Their hating of cruel princes, and they them, ii. 317.
Must necessarily have all the power originally in themselves, ii. 350, 369, 370. iii. 170.
Their right of examining into matters of government, &c. ii. 419. iii. 60, 64, 139, 300, 301, 326, 327, 328.
Can never fall into homage or dotage, iii. 75.
Did never part with all their power to kings, iii. 85.
Many governed by themselves, iii. 97.
The whole body not subject to the commands of the magistrate, iii. 279.
In their collective body always continue as free as the inward thoughts of a man, iii. 282.
They certainly perish who suffer themselves to be oppressed, iii. 324.
That are not free, can not substitute delegates, iii. 357. vide nations and multitude.
Perfection, simple and relative, iii. 180.
Persecution among the first christian emperors, ii. 92.
Persia, their kings reigned from the Indies to the Hellespont, i. 367.
The decrees of those kings passed for laws, ii. 44.
The just sentence against the princes about Daniel, ii. 89.

Torn to pieces by the fury of two brothers, ii. 156.
Under what ill conduct and dicipline their army was, ii. 216.
Petition, the haughty Romans condescended to join in one with their tribunes to their dictator, iii. 270.
Pharamond, his race in France, an account of it, iii. 112.
Pharaoh, his monarchy an act of tyranny, i. 360.
Pharisees, their superstition, iii. 132.
Philo, to what he imputes the institution of kingly government in Israel, ii. 64.
Philosophy, true, perfectly conformable with what is taught by men divinely inspired, i. 439.
Phocion, of his death, ii. 159.
Phœnicians, settling in Africa, brought their liberty with them, iii. 265.
Plato, a commendation of him, i. 428, 429.
His principles of government, i. 435, 439, 442, 451.
His opinion who ought to be advanced above all, i. 442. ii. 67, 251.
Plays, the consequence of them, ii. 105, 129, 172, 192.
Plebeans, elected to the chief magistracies, ii. 110, 145, 152, 284.
Their jealousy of the Patricians, ii. 226.
Polity, its signification, ii. 447.
Political science, abstruse, ii. 60.
Pompey, his cause more plausible, but his designs as bad as Cæsar's, ii. 307.
The first step to his ruin was the violating the laws, ii. 365, 366.
Popular government, for what people best, i. 434.
No where dispraised by Aristotle, ii. 80.
The extent of its conquests, ii. 82, 93, 132, 133.
Of Rome, how supported, ii. 132, 133.
Something of monarchical in them, ii. 144.
Can never be upheld but by virtue, ii. 174, 292.
Possible, but not easily to fall into corruption, ii. 179, 289, 291, 296.
Improperly what, and what in the strictest sense, ii. 180.
Preserves peace, and manages war best, ii. 189, 190, 191.
Every man concerned in them, ii. 196, 308, 321.
States remarkable for peace, ii. 207, 208.
Excellent men are generally chosen in them, ii. 220.
What seditions are seldom seen in them, ii. 227, 228.
How ruined, ii. 247.
Encourage industry, ii. 305, 306.
Never hurt private persons but through errors, ii. 308, 348.
When they began to appear in the world, ii. 470.
Obedience due to them as well as to monarchies, iii. 16, 17.
Portugal, who was accounted king of it by the English court, iii. 340.
Poverty, no inconvenience in it if virtue be honoured, ii. 291.
The miserable condition of Greece, Italy, &c. ii. 301, 303, 304.
When it grew odious in Rome, ii. 453.

Power, (all just sovereign) from the people, i. 418. ii. 24, 25, 28, 29, 48, 224, 369, 370.
How he that has it is the minister of God, i. 420, 422. ii. 90. iii. 202, 287.
Not an advantage but a burthen, i. 451, 452.
Delegated, to whom referred, ii. 24, 26, 29.
The root and foundation of it, ii. 29.
Civil, an human ordinance, ii. 31.
Of the people, subject to no rule but their own will, ii. 365.
Of the Romans, after the expulsion of the kings, chiefly in the nobility, ii. 390.
Naturally of a fierce and aspiring temper, ii. 176.
Sovereign and limited, ii. 236.
What, in all the kingdoms peopled from the north, ii. 357.
Most safe when least envied and hated, ii. 358.
If it has been divided it may be so in *ad infinitum*, ii. 383.
The Roman emperors endeavoured to make their power hereditary, ii. 387.
The ill effects of unlimited power, might cause it to be moderated, ii. 400.
What may be lawfully resisted, ii. 413, 414.
What prince ought to have it and what not, ii. 476.
Wilt thou not be afraid of the power, iii. 17.
Directive and coercive, iii. 34, 35, 44.
Why it ought to be limited, iii. 50.
Of the king is the power of the law, iii. 67. 187, 202.
What requisite in every state, iii. 78.
None can be just but what is good, iii. 164.
Over nations, must either be *de jure* or *de facto*, iii. 255.
Of the king, various according to the constitution of every state, iii. 257, 258, &c.
Nothing can make that inherent which is only delegated, iii. 300.
Restrained, when it began to grow insolent, instances, iii. 319, 320.
Where it is not universal, it is not inherent, iii. 343.
How that of every country, city, and borough of England is regulated, iii. 358.
What must be in those that act by a delegated power, iii. 364, 365.
Where it is placed by well constituted governments, iii. 368.
Practice, cannot declare the greatness of authority, ii. 421.
The consequence of such a doctrine, ii. 422.
Of nations to their sovereigns, iii. 269.
Prayers and tears, the only arms of the first christians, ii. 465.
Preferments, by what means men now rise to them, ii. 299.
Given to those that were most propense to slavery, ii. 322.
Where obtained only by virtue, ii. 326.
Prerogative of kings, what, i. 312, 442.

Of birth, i. 365.
Hereditary of dominion, i. 432.
All granted by consent of the whole society, ii. 21.
What the most glorious, ii. 434.
The utmost extent of it, what, iii. 74, 193.
Only instituted to preserve liberty, iii. 142, 183.
What is not the gracious bounty of it, iii. 157, 158, 378, 379.
Who thought whatever could be detracted from the liberty of the nation, would serve to advance the prerogative, iii. 380.
Princes, ordained for the good of the people, i. 386, 426, 431, 433, 436.
Ought to be rich in virtue and wisdom, i. 439, 440. iii. 90.
All things vary according to the humour of those that govern, ii. 87, 88, 89, 90, 91.
Very few of an inflexible virtue, ii. 177.
Killing one to obtain the crown, i. 384, 385. ii. 372, 373.
Easily imposed on by pretenders, ii. 294.
By setting up their own interest became enemies to the public, ii. 308, 309, 311, 317, 318, 399.
God's vice-gerents, during their duty, ii. 315.
The best, by what means drawn out of the way of justice, ii. 160. iii. 62.
For they have their failings, iii. 154.
Virtuous ones will have virtuous courts, ii. 298, 299.
Evil ones just the contrary, ii. 171, 176, 294, 297, 323, 326, 327.
How they soon lose their dominions, ii. 221, 222, 223, 271, 272.
Seek the destruction of their best subjects, ii. 272, 319. iii. 19, 20.
Some consider nations as graziers do their herds and flocks, ii. 315.
May commit many errors in the beginning of their reigns, to the ruin of themselves and people, instances, ii. 337, 338.
The treachery and perjury of some, ii. 377.
What those that govern them mitigate them to, ii. 399.
How far their legal power extends, ii. 414.
Such as are barbarous to their own, are usually gentle to the enemies of their country, ii. 460, 461.
A dangerous thing to arm them with too much force, iii. 48.
Bound by their oaths and promises, iii. 90, 91, 92, 93.
From whence their power is derived, iii. 201, 202.
Not safe to contradict some, though never so justly, iii. 349.
An unlimited one, what compared to, and an instance of such an one in scripture, iii. 350.
Principes, the extent of the word, i. 337, 411. ii. 14. iii. 40, 210, 224, 228.
What the Sanhedrim meant thereby, ii. 353.

Principles, of all generous nations before Christ's time, what, i. 315, 316.
And practices, the best way to judge men, ii. 172.
Prisoners ought to pay their promised ransom, iii. 92.
Private person, what actions denote a magistrate so, ii. 237, 242.
Privernates, their city taken by Plautius the consul, iii. 280.
Process, judicial and legal, what, ii. 232.
Or extrajudicial, ii. 245.
Proclamations, are at most but temporary, iii. 347.
The danger of their being accounted laws, iii. 357.
Promises, ought justly to be performed, iii. 91, 92.
Even those extorted by fraud, iii. 93.
Of our kings, if they be the fountain of it, iii. 72.
Propositions, ought to be universally true, i. 331, 343.
Filmer's general one found false, i. 371, ii. 316, 317.
Proscriptions, ii. 103, 107, 121, 126, 164, 252, 253.
Prosperity, runs naturally into all manner of excesses, ii. 121, 171.
Men have been precipitated into ruin by it, iii. 321, 322.
Proxies, the way of using them, ii. 31.
Proximity, of blood only regarded in some places, whether legitimate or not, ii. 263. iii. 254.
How right descends this way, iii. 244, vide *succession*.
Punishment, of supreme magistrates in three instances, ii. 215, 216, 218, &c.
To exempt all persons from it, supposes they would be guilty of the worst, ii. 246.
Where there is no fear of it, ii. 294, 295.
Future, many do not believe in it, or regard it, ii. 405. iii. 13.
Of those the prince corrupted to defeat the public cause, iii. 291.
Of those that give princes ill advice, iii. 345, 346.
Whether it ought to fall upon one, or a few guilty persons, or on a whole nation that is innocent, iii. 326.
To what members of parliament are subject, iii. 360.
In whom the power of it is lodged, iii. 366.
Phyrahus, seems equal to either of the Alexanders. ii. 221.
His answer to him that asked, who should succeed him, ii. 255.

Q

Qualities, no more extraordinary in princes than in others of less degree, i. 323.
What are requisite for chief magistrates, i. 384, 390, 431, 432.
Few kings possess all that are requisite, ii. 88.
What subsist in a well ordered government, ii. 102. 103.
The most eminent, without virtue reputed odious, ii. 102.
Quarrels among princes, for the most part, began upon personal titles, ii. 230, 271, 272, 275.

Of princes, where they have been decided with their own swords, ii. 264.
What would make a perpetual spring of irreconcilable and mortal quarrels, ii. 263.
Such as arise between the nobles and commons, frequently produce good laws, ii. 284.
The English quarrel with the Dutch, when, ii. 310.
Queen Athalia, destroyed the king's race, and was killed herself by Jehoida, ii. 252.

R

Rawleigh, Sir Walter, reflected on by Filmer, iii. 247.
His morals no way exact for a well qualified gentleman, iii. 247.
Reason, is man's nature, ii. 183, 427. iii. 62.
Universal, is that to which all nations owe an equal veneration, iii. 37.
Rebellion, the greatest empire of the east overthrown by that of the Mamelukes, ii. 119.
People driven to it by misery and despair, ii. 119, 120, 422, 423.
There can be no such as that of a nation against its magistrates, iii. 279.
What it implies, iii. 279.
Is nothing but a renewed war, iii. 280, 284, 285.
What is compared to witchcraft, iii. 285.
Regal power, never exercised by Abraham, i. 345.
The first fathers after the flood had not the exercise of it, ii. 380.
Regicides, their abominable sin, iii. 150.
Regnum, the signification of the word, ii. 400.
Rehoboam, a sad account of him, ii. 90, 173.
His power far from being absolute, ii. 475, 476.
Had good counsel but would not hearken to it, iii. 76.
Was not the head of his people, and why, iii. 313.
Religion, always dangerous in the times of the best Roman emperors, ii. 92.
Of the same nature with virtue, ii. 313.
The principles of the Popish, iii. 354, 355.
Remedies, to government applied according to the necessity of circumstances, ii. 110, 151. iii. 319, 320, 321.
What children have against their too severe parents, ii. 404.
None to the Hebrews' cries and prayers under their miseries, ii. 411.
Must be tried, however so difficult, iii. 324, 325.
Which most fit to be applied, the best time to apply them, and who the properest judges, iii. 332, 333, &c.
Representations, how, and by whom they came to be deputed, iii. 212, 213, 224, 227, 299.
Whether the people should judge of their behaviour, iii. 300, 301. *Republics*, vide *commonwealths*.
Resignation, of one's liberty, what, iii. 264, &c.
Of the crown, iii. 97, 98, 327.
Resistance, in what cases justifiable, ii. 312, 414, 418, 419, 437, 438.

Every one has a right to resist that which ought not to be done to him, ii. 430, 431.
Scripture instances of resisting princes, iii. 13.
Resumption of lands, vide grants.
Retaliation, where nothing was more just, ii. 89.
Kings under this law as well as people, ii. 425.
Revenue, how granted, and settled on kings, ii. 452.
Revolts of conquered nations, ii. 116.
Of subjects or allies, ii. 119, 253.
Of Israel in Solomon's time, ii. 252, 423, 424.
Of Absalom, ii. 421, 423.
Of the ten tribes, ii. 422.
General, of a nation, cannot be called a rebellion, iii. 278, 279.
Revolutions, vide, authors of them.
Rewards and punishments, how to be proportioned, ii. 160.
Make men subservient to ill designs, ii. 450, 451.
What called the rewards of the vilest punishment, iii. 210.
Riches, the root of all evil, i. 415, 416. ii. 291, 293.
When they become formidable, ii. 110.
Exhausted by tribute and rapine, ii. 121.
Desired to gain followers, i. 364.
From thence all mischiefs ensue, ii. 453.
Right, of those sovereigns that are limited, ii. 237, 238, 239, 240.
Proceeds from identity, not from similitude, iii. 311.
What belongs to every man in all cases, iii. 329.
Acquired, how to be obtained, iii. 104, 236.
How the resignation of it to another operates, iii. 236.
Hereditary to the dominion of the world, no such thing, i. 397, 398, 450.
Great variety in the deduction of it, ii. 45, 46.
Universal, conferred by God and nature, i. 378.
Where it must have been, i. 391, 393, 407. ii. 21.
Must be one or divided, i. 391, 394.
Where it devolves on particular nations, ii. 23, 24.
Of chusing, infers a right of making a king, ii. 56.
Created by an explicit act of approbation, ii. 38. 53.
Naturally belonging to nations not impaired by the name of supreme given to magistrates, ii. 236.
Of proceeding judicially, or extrajudicially against all that transgress the laws, ii. 243, 244, 414, 415.
Of occupancy, i. 384, 416, 417.
None to be deduced from him, that had none, i. 355. 393, 394, 395.
Where to be acknowledged, i. 385.
Of Jack Straw, Wat. Tyler, Perkin Warbeck, ii. 264.
The continuance of an unjust usurpation can never create a right, ii. 388.

Of particular nations, how it may subsist, i. 326, 327.
Proceeds from the laws of nature, i. 17. iii. 307, 208.
To crowns, what said to be inseperable from kings, ii. 65, 66.
Must be either natural, created, or acquired, iii. 104.
Rochelle, how it came to be taken, ii. 329.
Rods and Axes, before whom, and why carried, ii. 167. iii. 270.
Roman Emperors, who the wisest and best of them, ii. 288, 289, 290.
How they were set up, ii. 470.
Empire, destroyed by the loss of her liberty, ii. 91, 98, 99, 100, 104, 105, 124. 125, 126, 133, 153, 154.
Its extent after the recovery of its liberty, ii. 102, 124.
Tacitus his description of its declension, ii. 104, 107.
It did not fall of a sudden and why, ii. 105.
Her delators, what sort of people, ii. 104.
Subdued by the most barbarous nations, ii. 108, 128, 166.
Perpetually decayed when it fell into the hands of one man, ii. 122, 125, 128, 445.
Its own prudence preserved it, ii. 133, 153.
Romans, had three ways of dealing with conquered nations, ii. 118.
What raised them above the rest of mankind, ii. 196, 197.
They only, fit to be so who thought nothing valuable but liberty, iii. 280.
Rome, whether the government was paternal, i. 382.
Overthrew all the monarchies within their reach, i. 282. iii. 102, 132.
Its extent at first, ii. 14, 123.
Wherein she excelled other nations, ii. 83, 124, 125.
When she met with defeats and ruin, ii. 85, 323, 324.
All that ever was desirable in her proceeded from liberty, ii. 101.
Never produced a brave man since the first age of her slavery, ii. 104.
How it was conquered, ii. 139.
Sought her grandeur by war, ii. 146, 202, 203.
Her fortune when she became a monarchy, ii. 148, 149.
None so free from crimes of wilful injustice nor guilty of so few errors as she, ii. 160.
The generosity, ii. 160.
The mildness of her government for 300 years, ii. 162, 169, 170.
Strugling for liberty was at last ruined by the barbarians, ii. 165, 166.
Not enslaved when Brutus was killed, ii. 217.
Was jealous of Valerius Publicola, and why, ii. 226.
The peace she had under Augustus, ii. 253.
When filled with blood and ashes, ii. 255.
Her condition afterwards, (say in 1640) ii. 303, 304, &c.
Suffered more by one villain than from all the defeats of Hannibal, ii. 306.
A perpetual spring of brave and valiant men so long as liberty lasted, ii. 325.

Remained in slavery notwithstanding the slaughter of Cæsar, i. 349.
Her kings' lands after her expulsion consecrated to Mars, i. 365.
Romulus slain for aiming at too great an authority, i. 381.
How not made king by the people but by God, i. 418. iii. 170.
The right of appeals to the people, was the foundation of his commonwealth, in his time, ii. 114.
How he tempered the fierce humour of the people, iii. 179.
Rule, there must be one relating to the requisition and exercise of power, ii. 345. iii. 252.
The law of nature is that rule which God has given to things, ii. 428.
If any had been given by God and nature, it must have been from the beginning, universal and perpetual, iii. 173.
There is one which kings are obliged to follow, iii. 252, 253.
None can be so exact as to make provision against all disputes, iii. 286, 287.
Without it society cannot subsist, iii. 330.
Men subject to none but that of their own reason, iii. 368.
Rules, set to distinguish right and wrong in princes, i. 385.
By which men are governed are named laws, i. 430.
Not generally true, if there be any just exceptions against them, ii. 28.
In politics which ought always to be observed, ii. 152, 183.
Observed in England as to point of succession, ii. 236, 264.

S

Sabeans, though obeyed in all things within their palace, yet might be stoned without it, ii. 48.
Sacred, not to be accounted so by crimes, ii. 243.
The stile given to the tribunes as well as the monarchs, iii. 270.
Salick law in France, i. 402, 403. ii. 262, 263, 360, 361. iii. 99, 107.
Was in force upwards of 1200 years, ii. 361.
Not without difficulties sufficient to subvert the polity of that kingdom, instances thereof, iii. 120, 121, 122.
Salmasius, his story of bees, ii. 60.
Salus Populi, lex est suprema, ii. 51, 400, 401, 462. iii. 73, 107, 109, 183, 193.
To what this safety extends, iii. 73.
The end for which governments are instituted, iii. 78.
Samuel, was no king, for the Israelites asked one of him, ii. 403.
What he wrote in a book was not a law to the people but to the king, ii. 403.
Told them their folly and misery in asking a king, ii. 411, 426.
Not he, but God was rejected by them, ii. 75, 457.

How he behaved himself as head of the Israelites, iii. 314.
Sanhedrim instituted by Moses, ii. 69, 138.
How permanent, ii. 71.
Always to be advisers of the Jewish kings, ii. 352. iii. 24.
Where said that kings can do nothing without them, ii. 423. 424.
For what end constituted judges, ii. 424.
Saul, his first sin by which he fell, ii. 64, 138.
Opposing God's command he pretended to fulfil it, ii. 90.
The effects of his various fits of fury, ii. 89. 90, 460.
His vices never discovered till he was on the throne, ii. 296.
Gave the Israelites no law, ii. 402, 403.
Chosen king in the most democratical way, by lot, ii. 408, 415.
How he overthrew his own right, ii. 4 7.
Not made king by virtue of God's election only, ii. 418.
Savoy, the duke of, found out thirteen halves in the year, iii. 283.
Saxons, set up kings and deposed them as they pleased, iii. 27. 215. 216.
The brave saying of king Offa, iii 94. 252, 268.
Laws to which all the British kings were sworn continue still in force there, iii. 96.
Several assertions of their liberties and laws, iii. 171, 209, 236.
The English chiefly derive their origin and manners from them, iii. 209, 267.
Their assemblies, the same in power as the British parliaments, iii. 212, 213.
In their own country, scorned all employments but that of the sword, iii. 230.
By what means they and their general assemblies were called, iii. 230.
Came there (into England) under Hengist and Horsa, iii. 235.
How they came to reform their manners and to frame laws, iii. 268.
Their great wisdom in making laws, iii. 370, 371.
Schoolmen, an unjust imputation on them, i. 313, 315, 331, 428.
To what a nicety they have minced oaths, iii. 85.
Scientes Temporum, who, ii. 322.
Scipio Africanus, the first that disdained the power of the law, ii. 162.
Scotland, the mischiefs brought upon the country by their contests, ii. 279.
When and how conquered, ii. 331.
Their small number of foot beat the kings army at Newborn, ii. 334.
James III. the apt scholar of Lewis XI. in subverting the laws, ii. 358.
Many of their kings punished with death, imprisonment, and exile, iii. 326, 333.
Scripture, the places therein relating to government, how best interpreted, i. 338.
What it says concerning

kings, i. 338. ii. 66, 448, 449.
The accounts given concerning their leaders, ii. 66, 67.
What it occasionally relates of the Babylonians and other monarchies, ii. 357.
Declares the necessity of setting bounds to princes, ii 353.
Is clear concerning the antiquity of laws, ii. 401.
Senate, their power, i. 335. ii. 112.
Julius Cæsar slain in it, ii. 91.
Set up by the people, ii. 123.
How exposed and destroyed, ii. 125, &c.
Condemned Nero to be put to death, ii 167.
Killed Romulus, ii. 202.
Strangers admitted into that of Rome, ii. 203.
Abrogated the power of the *decimviri*, ii. 235.
The best judges, ii. 241, 242.
And people of Rome not to be bribed, ii. 296, 299.
Of Rome like to be butchered, and for what, ii. 254.
Chosen for their virtues, ii. 301.
Of what constituent parts it may be composed, ii. 371.
The greatest part of them fell at the battle of Pharsalia, iii. 165.
Of Sparta and Venice their great power, iii. 205.
Senators and servants employed in the public affairs of England, iii. 359.
Sedition. Popular, i. 325.
What, ii. 232.
What it implies, ii. 30.
Said to be occasioned by learning, ii. 80, 95, 157.
None hurtful to Rome until men got above the law, ii. 115, 116.
From whence it arrise, ii. 226, 228. 257.
Proceeding from malice, is seldom or ever seen in popular governments, ii. 228.
But always detestable, ii. 247.
One of the greatest that ever was at Rome was appeased, and how, ii. 254.
When justified by God and man, ii. 233, 235, 237, 247.
Most natural to absolute monarchies, iii. 308, 309.
From Solomon's time the Jews were perpetually vexed with them, ii. 248.
To what some magistrates gives this name, iii. 127.
Seneff, the battle of it, ii. 333.
Servants, of God, who, i. 421.
Raised to high degrees of honour, ii. 437, 438.
None can be members of a commonwealth, i. 448. ii. 27, 28.
Ship Money, vide judges.
Shires, for more ancient than Alfreds time, and what meant by them, iii. 225, 226.
Singulis Major, universalis minor, ii. 239. iii. 12, 13.
Slaves, by nature, who, i. 316, 327, 373, 438. ii. 51, 437.
Often times advanced, i. 438. ii. 104, 106, 156, 171. iii. 70.
No members of the civil society, ii. 118.
Absolutely resign themselves to the will of others, and why, ii. 186, 187.
What states became so to their protectors, ii. 214.
What tributes they are forced to pay, ii. 477.
What denotes a slave, iii. 73, 140, 141.
What the true badges of slaves, iii. 130, 131.
Melancholly, when the worst

of them began to govern kings, iii. 380.
Slavery, what to be understood by it, i. 327, 352, 353, 365.
What it is accompanied with, ii. 82, 83, 156.
The produce of it, ii. 130, 132, 192.
The Asiatics underwent the greatest, ii. 412.
A great part of the curse against Cham and all his posterity, ii. 424.
None of God's institution, ii. 426.
What brings it upon any nation, together with its ruin, iii. 217.
With a witness, iii. 356.
Sloth, in princes the miserable effects thereof, ii. 270.
Smyrna, the design of taking that flat, ii. 336.
Societies, must in some measure diminish liberty, i. 351, 352, 359, 429, 430.
Subsist only by order, i. 440. ii. 19, 20. iii. 330.
Civil, composed of equals, i. 446.
How instituted, ii. 17, 29, 30.
When once entered into, oblige all to keep the laws thereof, i. 29.
Are maintained by mutual contracts, ii. 364.
Socrates, put to death by false witnesses, ii. 159.
Soil, kings not originally lords of it, iii. 233, 234, 266.
Soldiers. in scripture, there were as many to fight for their country as there were able men to fight, ii. 206.
Every man is one against a public enemy, ii. 234.
The Grecians, in the time of their virtue had no equals, ii. 325.
The christians, their obligation, iii. 137.
Mercinary, overthrows all the laws of a country, ii. 176, 365.
Often betray their masters in distress, ii. 193, 196.
Several cities in Italy made their wars by them, ii. 203.
Always want fidelity or courage, ii. 214.
Sent to the wars by force, ii. 332.
And other villains, subdued the Syracusans, Spartans, and Romans, ii. 385.
Soldiery accounted a trade, ii. 115.
Solomon, his idolatry and oppression, ii. 90.
The bad effects of his magnificence, ii. 251.
His peaceable reign, ii. 252.
Overthrew the law given by Moses, ii. 422.
None will say he was a tyrant, yet he was complained of by the people, ii. 457.
His wisdom surpassed that of all the people, iii. 303.
Sovereigns, impatiently hear competitions, i. 347.
Majesty, the extravagancy of it in Augustus Cæsar's time, ii. 273.
Sovereignty, remained in the Roman people, ii. 112.
To whom the disposal of it must perpetually belong, iii. 251, 253.
Spain, had nothing save Milan, but had come to her by marriage, ii. 224.
The civil wars there, ii. 278, 279.
The ancient kingdoms of

Spain hereditary, ii. 49. iii. 99.
When one kingdom comprehended all Spain, ii. 109.
How the crown was disposed of according to the humour of the people, ii. 109, 110, 111.
The only title Isabella had to the crown, was derived from illegitimacy, iii. 121.
How the king may deserve the name of being head of his people, iii. 317.
Spaniards, their valour against the Carthaginians and Romans, and their overthrow by two lewd tyrants, ii. 223.
The condition to which they reduced Naples, Sicily, the West-Indies, &c. ii. 305. 306.
Spartan kings, what they were subject to from the people, ii. 44, 46, 48.
Together with their power, ii. 356.
Government in what it consisted, ii. 138.
Preferred by Xenophon to Athens, ii. 157, 158.
Framed a most severe discipline, ii. 203.
Never any sedition against their kings. ii. 356.
Called an aristocracy by all the Greek authors, ii. 370, 371.
Appointed limits to the power of their kings, ii. 374. iii. 288, 319.
Had no law against adultery, and why, ii. 398.
Spartans, whom they brought from Thebes and Epirus to be their kings, i. 379.
Jealous of Lycurgus, and why, ii. 226.
Had kings before the times of Hercules and Achilles, ii. 47.
Sacrificed their lives in defence of their country, ii. 200.
Never heard an enemy's trumpet for 880 years, ii. 205.
Whether descended from the Hebrews, and what power the collective body of the people had over them, ii. 356.
The poverty and simplicity of their kings, ii. 451.
Their legislature was in the people, iii. 25.
Stability, the effect of good order in that which is good, i. 384. ii. 86, 87.
Wherein it consists in man, ii. 86.
There can be none in absolute kingdoms, ii. 94, 253, 276, 280.
Produces strength, ii. 95.
Not wanting in Venice, ii. 99.
Nor among the Romans, ii. 102.
Star Chamber, its jurisdiction abolished, iii. 203.
States-General, vide Holland.
Statues, from whom they receive their authority and force, iii. 347. vide acts of parliament.
Stipulations, are not personal but national, iii. 339.
Surez, his saying about Adam, i. 447.
Subjection, lineal, never anciently dreamed of, i. 444.
To the power however acquired, ii. 233.
And protection are relatives, iii. 166.
Submission, all manner of it is a restraint of liberty, ii. 183.

The nature and measure of it how to be determined, ii. 330.
Succession, no difference in religion said to be able to divert the right of it, i. 357.
The eldest brother (in some cases) preferred before the son, ii. 49.
To the next in blood, ii. 86.
Of blood, the disease incident to it, ii. 216.
Laws concerning it, ii. 260. iii. 52.
By the laws of God and nature, ii. 361.
The various ways of it in several kingdoms, ii. 262, 263.
The slaughters about it in France, ii. 268. 269.
Sometimes comes to monsters in cruelty, to children, and fools, iii. 47. 48.
The law gives the rule of it, iii. 57, 99, 100, 108.
Five different ways of disposing of it, iii. 99, 100, 253, 254.
In Spain according to the pleasure of the nobility and the people, iii. 109, 110.
Where in France it was likely to be questioned, if not overthrown by the house of Austria, iii. 116.
Contests will arise concerning it, how exactly soever it be disposed of by law, iii. 243.
No footsteps of any regular one, either by inheritance or election, iii. 171.
Of the crown, settled by parliament, iii. 228.
Several questions arising from that which is hereditary, iii. 243.
Superiority, given to Moses who was the younger brother, i. 361.
Not in nature but in virtue, ii. 430, 431, 440,
Supplication and remonstrates, where to be used, iii. 324.
Supreme, the extent of the word, ii. 236, 237 239, 391, 392, &c. iii. 145, 146, 166.
Power has been enjoyed in the fullest extent by such as never had the name of king, iii, 39.
Where there was a reservation of this power in the people, iii. 59.
Sweden, the blood royal not to marry out of the country, or without consent of the state, ii. 263.
How the inheritance to the crown is settled there, iii. 101, 250.
Election the last title to it, iii. 105, 224.
Their laws but few, iii. 185.
Who the nobility of that country, ii. 224.
What Charles Gustavus told an ambassador, iii. 250.
Switzers, the 13 Cartons how they long enjoyed more peace than any other state in Europe, ii. 211, 212.
None were more free from popular sedition, ii. 212.
The laws of their country so brief, they might be read over in a few hours, iii. 185.
Sword, where left as an inheritance to families, ii. 91.
The right of appeals overthrown by it, ii. 114.
He that draws it against his prince ought to throw away the scabbard, ii. 228.
Of justice and of war, ii. 231, 471, 472.
When it is the only law which governs, ii. 255, 307.

A way of killing worse than that of the sword, ii. 304.
To what end swords were given to men, ii. 438.
The use of the civil, as well as the military, equally condemned by the first christians, ii. 471, 472.
Of power in all sorts of governments, iii. 16, 17.
So to be used that nations may live peaceably, iii. 23.
What meant by this word, iii. 23, 24.
Of justice comprehends the legislative and executive power, ii. 24.
What is signified by the military sword, ii. 24, 25.
Questions about titles to crowns often determined this way, iii. 120.
Where edicts are hesitated at by the parliament at Paris, this power has been made use of to compel, iii. 375.
Sylla, the crimes of his life, and miseries of his death, ii. 286, 287.
If not a tyrant, there never was any one in the world, ii. 307.
Resigned his power, but too late for Rome's recovery, ii. 307.

T

Tacitus, his melancholly account of Rome, i. 426. ii. 104, 107, 164, 190, 192.
Speaks of the burthen of absolute power, i. 452.
Mentions a sort of kings used by the Romans to keep nations in servitude to themselves, ii. 112.
When he says the Roman laws grew innumerable, ii. 125.
Tamerlane, said he was not a man, but the scourge of God, and the plague of mankind, iii. 79.
Tarquin, the expulsion of him from Rome, i. 331. iii. 170.
The first that reigned *sine jussu populi*, ii. 24.
Came in by treachery and murder, ii. 100, 124, 154, 241.
How the people delivered themselves from him, ii. 141, 186, 187, 284, 285.
What followed from his being expelled, ii. 228, 436.
His counsel concerning the poppies and Periander's heads of corn, ii. 265.
Taxes, upon what accounts to be given, but not to oppress the people, ii. 452.
Tenants, how they look upon their lords, iii. 293, 294.
Tenure, none in England owes any but by virtue of a contract, made either by himself or his predecessors, ii. 440.
Those of turpitude, how abolished, ii. 441.
Of the commons, as ancient as many of the nobilities, iii. 219.
Tertullian, several sayings out of his Apologetics, ii. 471, 472.
The design of his apology and treatise of Scapula, ii. 472, 473.
Calls the whole people of Carthage, *antiquate nobles, nobilitate felices*, iii. 251.
Thanestry, the law of it, ii. 49.

Themistocles, his character, ii. 158.
His envy and spite to Aristides, ii. 158.
All the citizens of Athens, able to bear arms, went along with him against Xerxes, ii. 199.
An extraordinary saying of his, ii. 289.
Tiberius, his reign, an uninterrupted series of murders, perjuries, subordinations, &c. ii. 253, 254, 266.
Assumed the name of Cæsar without any title, ii. 467.
His detestable lust described by Tacitus, iii. 39, 40.
To what counsellors he only inclined, iii. 77.
Time, doth not change kings so much as is generally said, excepting in governments, ii. 225, 326.
Can make nothing lawful and just that is not so itself, iii. 207.
Titles, of the first kings, came from paternity, i. 347. ii. 381, 382.
Of princes derived from murders, &c. i. 384, 388.
Some would not have them examined into, i. 385. ii. 233.
Hobbes, of another opinion, ii. 234.
Instances of the English in particular, iii. 244, 246.
Of civilty have no right to create a power of dominion, ii. 13.
Disputes about them, by what power to be determined, ii. 51, 52. iii. 123.
Thought good if the princes could corrupt two or three legions, ii. 255.
No emperor had any better than what he got by money or violence, iii. 255, &c.
To dominion, by whom conferred, ii. 381, &c.
The sordid ways of attaining them in later days, iii. 219.
On whom those of offices, were anciently conferred, iii. 219.
In what just ones do consist, iii. 241.
Several ways to overthrow most of them, iii. 243, 244.
Kings, where instanced in, to have no other title than what was conferred on them by the people, iii. 250.
Whatever is given to the chief magistrate, he can have no other than what is given him by the people and the laws, iii. 260.
The most swelling and august, to whom given, iii. 271, 292.
Trade, subservient to the purpose of war, ii. 203, 204, 205.
Spartans banished all the curious arts that are useful to it, ii. 203, 204.
Trajan, his expedition into the east, ii. 124.
Bitterly derided for his clemency by Turtullian, iii. 33.
Whom he bid to use the sword for or against him, iii. 255, 365.
Treason, the principal part of Tresilian's was his opinion that kings might dissolve parliaments at their pleasure, iii. 298.
Persons executed as traitors for things done by the king's command, iii. 345.

It is enacted that to kill the king is so, and to be punished with death, iii. 373.
Treaties, the names of kings always used in them, although those kings may be children, or otherwise incapable, but yet the treaties are binding on them, their successors and people, iii. 341.
If parliaments should make ignominious ones, when the session is ended, they must bear the burden as much as others, iii. 369.
Tribes, the ten, why they did not return to the house of David, ii. 422.
Tribunes, of the people, their creation, ii. 146, 285.
Military, with a consular power, ii. 146, 152.
How Cæsar corrupted them, ii. 147, 174, 175.
The most dangerous sedition composed by them, ii. 227.
Threatened the dictator with a great fine, ii. 393.
Esteemed sacred and inviolable, iii. 270.
Tribute, the ancient Jews scrupled paying it to the emperors, ii. 467.
What understood by the name, ii. 467.
We owe none but what we freely give, ii. 477.
Triumvirate, first set up by Pompey, ii. 307.
Trust, what the greatest that can be reposed in men, iii. 204.
Where that reposed in kings has been misemployed, iii. 228.
How kings are said to dispense with it out of the public stock, iii. 299. vide kings.
Truth, no consequence can destroy it, i. 318.
Is comprehended by examining principles, i. 321. iii. 167.
Is the rule of justice, i. 374.
Our thoughts ought ever to be guided by it, i. 375, 444.
The knowledge of it makes men wise, i. 444.
Can never be repugnant to justice, i. 448.
What are real truths grounded on the laws of God and nature, ii. 43.
Kings seldom hear it till they are ruined by lies, iii. 340.
Can never be made too evident in matters of importance, iii. 108.
Of absolute necessity to keep the tongue from falsehood, iii. 124.
The bond of union, iii. 128.
They that enquire for it must not deny or conceal any thing, iii. 237.
Can seldom or ever conduce to mischief, iii. 308.
Tryal, vide law.
Ores acquitted, not questioned a second time for the same fact, iii. 243.
In France the king cannot be present at any, for no man can be judged if he be, iii. 338.
Here is said to *coram rege* but it must be only according to the law of the land, iii. 342.
Tumults, where they do not hurt, ii. 83.
From whence they arise, ii. 226.
What, ii. 231.

Among the Hebrews, ii. 241, 242.
Of Rome their difference from some of our battles, ii. 284.
What reigns are most accompanied with them, ii. 271.
Turks, all the royal brethren exposed to be destroyed by the Sultan, ii. 13.
Their greatest strength consists in children who do not know their own fathers, ii. 192.
How they once came by their ruin, ii. 305, 306.
When the Germans fled to them for protection, iii. 306.
Turene, marshal, his bold speech to Louis XIV. ii. 329.
Tuscany, when one of the most promising provinces in the world, afterwards reduced to so low an ebb, iii. 383, 384.
Tyranny, how it may be weakened, i. 319. ii. 82, 83.
Abhorred by the laws of God and man, i. 389. ii. 286, 287, 352.
Brought ruin to those subjected thereto, i. 430.
To impose laws arbitrarily, ii. 41, 42.
Can create no right, ii. 46, 47.
Is Empire gained by violence, ii. 48.
The occasion of revolts, ii. 120, 121.
All had its beginning from corruption, ii. 172, 248.
Introduced by the worst of men, ii. 185, 186.
The overthrow of Spain, ii. 224.
The people always miserable under it, iii. 450.
Never was founded on contracts, ii. 239.
When it began to become odious, ii. 308, 309.
Where it is very cruel a nation cannot subsist, unless it be corrected or suppressed, iii. 60.
To set it up is to abolish kings, iii. 81.
Is the death of a state, iii. 324.
Not the tyrant, but tyranny must be destroyed, iii. 336.
With a mischief, iii. 356.
Tyrants, how they have been accounted, i. 325, 371, 425, 426. ii. 399.
The first king a cruel one, and called a mighty hunter, i. 343. ii. 88.
Consult only their own greatness, i. 389, 451. ii. 147, 387.
Obedience said to be due to them from the 5th commandment, i. 425.
The difference between lawful kings and them, i. 451. ii. 344.
Few go to their graves in peace, i. 452. ii. 286, 287, 368, 435, &c. iii. 48.
Destroyed by one another, ii. 91, 92, 248, 272, 273. iii. 61, 80, &c.
When they reign, the virtuous are not regarded, ii. 101, 102.
Fear and abhor all men of reputation, ii. 126, 241, 271, 309.
All evils come in with them, ii. 130.
Destroyed by their own people, ii. 141, 387.
The 30 (tyrants) of Athens, ii. 159, 233.
Said *excuisse hominem*, ii. 190, 239.

Consider nations as graziers do their herds, ii. 314.
A virtuous man could scarce die in his bed under tyrants, ii. 165.
Amongst the most virtuous nations, every man might lawfully kill them, ii. 234, 344, 387. iii. 81.
Tyranni sine titulo, ii. 234. iii. 277.
Extrajudicial proceedings must be sometimes against them, ii. 345.
What may be expected from them, ii. 315.
None such upon Filmer's principles, ii. 344. iii. 71, 72, 76, 78, 80.
To what excesses of cruelty fear drives them, ii. 346.
Whom Aristotle accounts such, ii. 352.
Who is said to have laid the foundation of tyranny, iii. 355.
Do many mischiefs, and suffer more, ii. 368, 375, &c.
Their life miserable, death infamous, and memory detestable iii. 378.
Whether the whole course of their actions do well suit with the sacred name of father, ii. 296, 397, 398, 399. iii. 80.
Some in removing them have cut tyranny by the roots, ii. 435, 436.
No name for one in any of the oriental languages, ii. 455, 456.
He is no more than an evil or corrupted monarch, ii. 456. iii. 62.
No obedience due to any of them, iii. 42.
When kings are said to degenerate into such, iii. 65, 66.
Set themselves up against all laws, iii. 70, 71.
Called so because they have no rights, iii. 81.
Are the worst of God's creatures, iii. 165.
Speak always in the singular number, iii. 238.

V

Valour, the Roman was for the good of the country, iii. 161, 162.
By the excellence of it the greatest powers in the world were subdued by the Romans, ii. 115.
Venality, natural to courts, ii. 170, 171, 172, 287, 288.
Looks always after the best bargains, ii. 214.
Venetians, of what they are composed, ii. 139, 240.
Relying on mercenary soldiers too much, are forced to depend on foreign potentates, iii. 263.
There too great inclination to peace accounted a mortal error in their constitutions, iii. 267.
Venice, the dukes, though styled supreme, yet are so under the power of the law, that divers have been put to death for transgressing it, ii. 238, 288, 289.
Their noblemen's love for the commonwealth, ii. 284.
Concerning the council of ten, iii. 255.
Verdict, of juries, in this consists the strength of every judgment, iii. 187.
Virtue, what, ii. 313.
What requisite in kings, i. 364, 376, 386, 389, 430, 438.

Gave birth to the Grecian governments, i. 379.
Gives a natural preference of one man above another, i. 428, 452.
And also the children, ii. 11.
Carries the true marks of sovereignty, i. 435, 442. ii. 79.
Never continues in any race of men, ii. 12, 256, 298, 300. iii. 192, 350.
Essentially necessary to preserving of liberty, ii. 82, 106, 326.
When persecuted, few will follow it, ii. 104.
No way to real honour without it, ii. 113, 291, 326.
Not to be considered when it is departed from, ii. 158, &c.
When attended with certain destruction, ii. 153, 154, 314, 325. iii. 19, 20.
The Roman, of being as a law to themselves, iii. 229.
Whose will be remembered in all ages, ii. 185, 186, 219, 246, 247, 324.
Makes as many soldiers as there are free men, ii. 197, 208.
Overcomes all difficulties, ii. 199, 217, &c.
And strength, make and preserve conquest, ii. 224, 225.
He that hath virtue and power to save a people, can never want a right of doing it, ii. 246.
Can never long uphold what is vicious in the principle, ii. 349, 350.
By what means it becomes popular, ii. 291, 292.
Those are hated and feared who most excell in it, ii. 298.
Hated for its own sake, ii. 313.
Expires with loss of liberty, ii. 325.
Given where God pleases without distinction, ii. 340, 341.
Where it has the advantage there can be no arbitrary power, ii. 377.
Once blemished, makes former services to be forgotten, iii. 42.
Who encourages it most, ii. 129.
Makes the distinction between men, simply or relatively considered. ii. 102.
Men are truly ennobled by it alone, iii. 219.
Those that are enemies to her and fear not God, are afraid of men, iii. 307.
The virtues of a man die with him, iii. 349, 350.
Vice, mankind inclined to it, ii. 103, 171.
The effects of it to a nation, ii. 104, 105, 231, 249, 250, 274, &c.
May be profitable to private men, but can never be so to the government, ii. 172, 173.
Its deformity when most conspicuous, ii. 175.
What England has lost by their vices, ii. 216.
Those of princes result to the damage of the people, ii. 283, 313, 318.
The vermin that attend vicious princes, ii. 323, 324.
By what means, and to what end, the vices of princes have been fomented, ii. 450.
Vicious persons, they will submit

to any power that promises them impunity, ii. 187.
Care not what they do, if they find their account in it, ii. 68, 69.
Villains, little better than slaves appointed to cultivate the lands, and to other servile offices, iii. 210, 211.
Villainy, where it has been promoted to supreme dignity, i. 407. ii. 292.
What it inspires to attain its end, i. 377, 416. ii. 332, 333.
Tarquin hated only for his villainies, ii. 241, 242.
None that men of desperate fortune will not undertake, ii. 249.
Supported by committing still more, ii. 292, 293.
What Rome suffered by it, ii. 306.
Vitellius, thrown into the common sewer, ii. 254, 255. iii. 37.
His contemptible character, ii. 259.
Ulpian, his saying, that *princeps egibus non tenetur*, concludes nothing against us, iii. 195.
nion, similitude of interests, manners, and designs, ii 182.
United Provinces, were so steady in practice and principle as hardly to be parallelled in the world, ii. 210.
How the deputies are treated there, iii. 358, 359.
Have had dukes, earls, or marquisses, iii. 360.
Vortigern, the last and worst of the British kings, iii. 217.
His favouritism towards the Saxons, iii. 235.
Vox Populi est Vox Dei, ii. 226.
Nothing more natural than to follow the voice of all mankind, ii. 43. iii. 327.
General consent is the voice of nature, i. 351, 353. ii. 183.
The consequence of one voice in each state, ii. 368, 369.
Usurpation, made the first kings, i. 343, 345, 393.
Grounding pretensions of right from thence, i. 355, 370, 372, 380, 383, 406, 416. ii. 22, 352.
Justified, i. 406.
The greatest injury that can be done to man, ii. 22, 185, 234. &c.
What power is so, ii. 40, 41.
By whom bid to submit to it, ii. 233.
Lawful for an injured people to resume their own, ii. 243.
And violence said to confer an incontestable right, ii. 344.
All is detestable and abominable, iii. 16.
None can deduce any title from it, iii. 242, 243.
Usurpers, Athalia an usurpress, i. 404.
Have their root in violence and fraud, ii. 111.
Seem to be born for plagues to mankind, ii. 142, 396.
What lawful against one is lawful against all, that is to get rid of them, ii. 234.
May be suppressed as enemies and robbers, ii. 413.
Some that never were conquerors, iii. 15.
Declare their contempt of all human and divine laws, iii. 139.
We ought to examine the titles so as to judge of them, iii. 242.

Usury, the cruelty of it, ii. 110.
The mitigation of it composed intestine quarrels, ii. 284.

W

Wantoness, from whence it proceeds, ii. 120.
War and Peace, the kings of Sparta ever had the power of either, ii. 47, 48.
Translated by the collected body of the people, ii. 68—72.
War, the Hebrew government fitted them for war, ii. 206.
Of Charles, duke of Burgundy, with the Swiss Cantons, ii. 209.
Better performed in popular governments than in monarchies, ii. 220.
It is *disertatio per vim*, ii. 233.
When the people may engage in it justly, ii. 233, 234.
What to be accounted making of war, ii. 415, 416.
Differs much from what it was formerly, ii. 462.
There is such a thing amongst men as a just war, and why, ii. 16.
Kings of Judah could not make any without the consent of the Sanhedrim, iii. 24.
Whether a subject may examine whether it be just or not, iii. 137.
Where the cause of it is originally just, and it proves successful, what right the generals have over their enemies, iii. 258.
The events of it various, iii. 275.
Wars, Civil, only made by members of civil society, ii. 116, 117.
None until the times of Marius, Sylla and Cataline, ii. 117.
Esteemed the last struglings of expiring liberty, ii. 117.
The root of the Romans, what, ii. 136.
In France, ii. 149, 150, 277, 278.
From whence they arise, ii. 226, 279, 280.
Pretences for them commonly false, ii. 230, 231.
When they will always be frequent, ii. 271.
What reigns were most accompanied with them, ii. 272, 273.
In Spain, ii. 278.
More in kingdoms than in commonwealths, ii. 283, 301, 306.
Not the greatest evil that befals nations, ii. 300.
The Romans and Grecians gloried in freeing their country from a civil war, ii. 330, 331.
In Machiavel's account they are called a disease, iii. 324.
Wards, that court, how the institution of it was perverted, i. 411.
Westminster, what its privileges in point of elections, iii. 300.
Wickedness, makes men cowards, ii. 346, 347.
Will, is ever drawn by some real good or the appearance of it, i. 382, 383.
The dividing of the world left to the will of man, i. 394, 395.
Passing for law, the effects of

it, ii. 92, 344, 345, 387. iii. 369.
Where this is the rule, the prince sets up an interest separate from that of the people, ii. 378.
William I. elected, *clero & populo*, ii. 84. iii. 29, 31.
Could inherit nothing, ii. 47.
On what condition sworn to be received, iii. 94.
In his time the ancestors of the British were in a low condition, iii. 197.
Wisdom, not always annexed to the character of kings, i. 409.
When men give testimony of it, i. 410.
Whose we ought to admire, and imitate them, ii. 240.
The wisest men most fit for government, ii. 83.
Of man imperfect, ii. 150.
A kind of ability to dispatch some kind of affairs is sometimes called wisdom, ii. 340.
Of the collected body of the people, surpasses that of a single man, ii. 316.
Witnesses, false, encouraged, and called *custodes legem*, ii. 104, 171.
No sufficient defence against them either by the laws of God or man, ii. 159.
Ministers of iniquity, ii. 223, 319.
Countenanced at Rome, ii. 303, 304.
The best tribunals in the world may be misled by them, ii. 347.
Irish, ii. 104.
Wittenagemote, its power as declared by Cambden, iii. 220.
The power of the nation resided in them, iii. 225 297, 298.
Women, on what account they are excluded in France and Turkey, i. 402, 403. ii. 50, 262. iii. 101, 103, 254.
And where by other nations, i. 403, 404.
Some do admit them, i. 403. ii. 50.
What have governed kings, but seldom senates or popular assemblies, ii. 270, 271, 287, 288.
What mischiefs kings have been guilty of to gratify them, iii. 341.
Work, that of all magistrates and governors, i. 421, 432, &c.
Worst men advanced and most ambitious to be so, i. 412, 426, 427, 438, 439, 452.
And by whom preferred, ii. 176, 179, 181, 185.
Styled fathers of their people, i. 419, 421.
Have their tools to execute their detestable designs, ii. 128.
Tyranny set up by them, ii. 185, 186. 190.
Engaged in all tumults, ii. 251, 252.
Most frequently have obtained the Empire by the worst means, ii. 259.
Their principles ought to be destroyed, ii. 291.
Easily swallow bribes, ii. 293, 294, 297.
Have most power in some courts, ii. 295, 296.
How princes become so, as

also the most miserable, ii. 378.
Delight in the worst things, ii. 429.
Whom they had no need to fear, ii. 20.
What base courses they take to gain the favour of weak and vicious princes, ii. 48.
What encourages them to murder the best princes, iii. 202.
Worthy men, in all times suspected for their virtue, ii. 104, 105.
Ought to be held in the highest veneration, ii. 114.
Wrong, is a breach of the laws, which determine what is right, ii. 345.
If there be none done there can be no revenge, ii. 345.
Where kings can do none, iii. 343.

X

Xenophon, why he was called by Agesilaus a good and faithful king, ii. 45.
Conducted the Grecians' retreat in despite of 400,000 men, who endeavoured to oppose them, ii. 96, 97.
His opinion concerning tyranny, ii. 155.
For aristocracy, ii. 156, 157, 189.
Xerxes, his folly in inflicting stripes upon the sea, i. 409.
His invasion of Greece, ii. 199.

Y

Ynca, Garcillasso, of Peru, the fabulous story of him, ii. 257.
Younger Brothers, sometimes preferred to the elder, i. 360, 361. ii. 53.

Z

Zeal, excess of violence is but an ill testimony of it, ii. 208.
Zimri, his title to the supreme honour how acquired, i. 376.
Zoroaster, supposed to be Ham, i. 370.

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